EC America, Inc.
a subsidiary of immixGroup

General Services Administration
Federal Supply Service
Authorized Federal Supply Schedule Pricelist

GS-35F-0511T

Pricelist current through Modification # 4191, dated May 18, 2020.
Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service – which is categorized under a difference SIN (54151).

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

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

SIN 511210 - PERPETUAL SOFTWARE LICENSES

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

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

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

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

SIN 54151 - MAINTENANCE OF SOFTWARE AS A SERVICE

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

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

SIN 518210C – CLOUD COMPUTING SERVICES

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

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

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

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

SIN 611420 - TRAINING COURSES (FPDS Code U012)

SIN 54151S - IT PROFESSIONAL SERVICES

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

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

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

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

SIN 54151E1ECOM - ELECTRONIC COMMERCE (EC) SERVICES

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

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CONTRACTOR

Contract Number:
GS-35F-0511T

Period Covered by Contract:
June 27, 2007 through June 26, 2022

Pricelist current through Modification # 4191, dated May 18, 2020.

EC America, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102
Phone: 703.752-0610
Email:
ECAContracts@immixgroup.com
Website:
https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/

Business Size:
Other than Small Business
CUSTOMER INFORMATION

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

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

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

<table>
<thead>
<tr>
<th>SIN</th>
<th>Part Number</th>
<th>GSA Catalog Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>33411</td>
<td>EMO0330-06 P</td>
<td>$0.01</td>
</tr>
<tr>
<td>811212</td>
<td>12365-S2Y-813-6967-29</td>
<td>$0.01</td>
</tr>
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<td>511210</td>
<td>044-232322-01.P</td>
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<td>511210</td>
<td>1399_999999</td>
<td>$0.01</td>
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<tr>
<td>54151</td>
<td>Q24-DN000000110844</td>
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<tr>
<td>541519CDM</td>
<td>CPOS-ASG-S200-Y1-CDM</td>
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<td>54151S</td>
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<td>$196.47</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>SAAA298</td>
<td>$0.01</td>
</tr>
</tbody>
</table>

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

2. Maximum Order:

   The Maximum Order value for the following Special Item Numbers (SINs) is $500,000:
   - Special Item Number 532420L - Leasing of Product
   - Special Item Number 33411 - Purchase of Equipment
   - Special Item Number 811212 - Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts
   - Special Item Number 511210 - Term Software Licenses
   - Special Item Number 511210 - Perpetual Software Licenses
   - Special Item Number 54151 - Maintenance of Software as a Service
   - Special Item Number 518210C - Cloud Computing Services
   - Special Item Number 541519CDM - Continuous Diagnostics and Mitigation (CDM) Tools
   - Special Item Number 54151S - IT Professional Services
   - Special Item Number 54151ECOM - Electronic Commerce (EC) Services

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

3. Minimum Order: $100.00

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

5. Point(s) of production:

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

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

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

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

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

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

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

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

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

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

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

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

13a. Ordering address(es):
    EC America, Inc.
    8444 Westpark Drive, Suite 200
    McLean, VA 22102
    Or
See Authorized Dealers Listing by Manufacturer for Ordering Address and Contact Information at:
http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/

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

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

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

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

16. Export packing charges, if applicable:
Not Applicable

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

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

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

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

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

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

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

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

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

25. DUNS Number: 017573259

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

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

28. Glossary of Definitions:

a. “Contractor” means EC America, Inc.

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

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

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

29. Responsibilities of Contractor:
The parties understand and agree that Contractor acts as a reseller of all Equipment, Software, Documentation, and services offered under this contract. With regard to Equipment, Software, and Documentation, Contractor represents that it has the requisite right and authority under its reseller agreements with the Manufacturers to offer the products and grant the rights specified in this contract, and Manufacturers shall have no privity of contract with an Ordering Activity hereunder. With regard to services, while some or all of the services ordered hereunder may be physically performed by Manufacturer, Service Provider, or other third-party personnel (as is specified under applicable SINs) acting under a subcontract or similar arrangement with Contractor, and while the scope and price of such services are defined by the applicable provider's policies (such as Maintenance Services Policies, Electronic Commerce Service Policies, or Wireless Services plans), Contractor remains solely responsible to the Ordering Activity for all such performance.
1. Glossary of Definitions
a. “Documentation” shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for its (software or hardware) Products whether on-line or in hard copy.
b. “Products” shall mean the computer hardware or software identified on the Schedule Contract Pricelist to this schedule pricelist.
c. “Termination Ceiling” is the limit on the amount that a Contractor may be paid by the Ordering Activity on the Termination for Convenience of a lease.

2. Lease Types
The Ordering Activity will consider proposals for the following lease types:

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

Orders for leased Products must specify the leasing type.

3. Option 1

a. Statement

i. It is understood by all parties to this contract that orders issued under this SIN shall constitute a lease arrangement. Unless the Ordering Activity intends to obligate other than annual appropriations to fund the lease, the base period of the lease is from the date of the Product acceptance through September 30 of the fiscal year in which the order is placed.

ii. Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Product Lease or Purchase and OMB Circular A-11. Agencies are responsible for the obligation of funding consistent with all applicable legal principles when entering into any lease arrangement.

b. Funding and Periods of Leasing Arrangements

i. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:

1. The base period of an order for any lease executed by the Ordering Activity shall be for the duration of the fiscal year. All Ordering Activity renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the Ordering Activity exercises its rights hereunder to acquire title to the Product prior to the planned expiration date or

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

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

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

c. Discontinuance and Termination

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

4. Option 2

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

a. Leasing Price List Notice:

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

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

b. Statement of Ordering Activity Intent:
i. The Ordering Activity and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the Product for the term of the lease specified in such delivery order (the “Lease Term”). In that regard, the Ordering Activity, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the Ordering Activity’s intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order, which shall, either through a statement of work or other attachment, specify the Product being leased, and the required terms of the transaction.

ii. Each Ordering Activity placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the Ordering Activity for the Product or functionally similar Product continues to exist and funds are appropriated. Contractor may request information from the Ordering Activity concerning the essential use of the Products.

c. LEASE TERM:

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

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

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

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

d. LEASE TERMINATION:

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

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

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

ii. Termination for Convenience of the Ordering Activity: Leases entered into under this option may not be terminated except by the Ordering Activity’s contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions—Commercial Items, paragraph (l). Termination for Convenience...
of the Ordering Activity. The costs charged to the Ordering Activity as the result of any Termination for Convenience of the Ordering Activity may be reasonable and may not exceed the sum of the fiscal year’s payment obligations less payments made up to the date of termination plus the Termination Ceiling.

iii. Termination for Non-Appropriation: The Ordering Activity reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payment for the Lease Term will be available to the Ordering Activity. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the Ordering Activity’s contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the Product or functionally similar Product; or (b) there is a continuing need, but adequate funds have not been made available to the Ordering Activity in an amount sufficient to continue to make the lease payments. If this occurs, the Ordering Activity will promptly notify the Contractor, and the Product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.

iv. Termination Charges: At the initiation of the lease, Termination Ceilings will be agreed upon between Contractor and Ordering Activity for each year of the Lease Term. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the Ordering Activity received for the work performed based upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.

v. At the order level, the Ordering Activity may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

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

1. ORDERING PROCEDURES:

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

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

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

2. ASSIGNMENT OF CLAIMS:

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

3. PEACEFUL POSSESSION AND UNRESTRICTED USE:

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

4. COMMENCEMENT OF LEASE:

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

5. INSTALLATION AND MAINTENANCE:

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

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

6. MONTHLY PAYMENTS:

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

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

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

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

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

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

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

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

7. LEASE END/DISCONTINUANCE OPTIONS:

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

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

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

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

c. Returns:

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

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

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

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

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

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

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

8. UPGRADES AND ADDITIONS:

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

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

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

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

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

(1) were not leased from the Contractor, and

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

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

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

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

10. **TITLE:**

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

11. **TAXES:**

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

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

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

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

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

d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the Product under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be “continuous rental.”
1. GLOSSARY OF DEFINITIONS
   a. “Documentation” shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
   b. “Equipment” shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

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

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

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

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

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

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

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

9. **RESPONSIBILITIES OF THE CONTRACTOR**

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

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

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

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

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

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

   c. Maintenance Services may be discontinued by the Ordering Activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the Ordering Activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.

   d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.

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

   f. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of Maintenance Services, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

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

5. LOSS OR DAMAGE
   a. When the Contractor, through the Manufacturer, or its authorized service provider removes equipment to its establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the Equipment is removed from the Ordering Activity installation, until the equipment is returned to such installation.

   b. When Equipment is returned by Ordering Activity to the Contractor through the Manufacturer’s or its authorized service provider’s facility for repairs, the Ordering Activity shall be responsible for any loss or damage to the Equipment being returned by the Ordering Activity for repair. Contractor shall only be responsible for any loss or damage while the Equipment is at the Contractor’s or its Manufacturer’s or authorized service provider’s facility and until it is returned to the Ordering Activity’s location.

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

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

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

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

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

7. RESPONSIBILITIES OF THE ORDERING ACTIVITY

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

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

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

8. RESPONSIBILITIES OF THE CONTRACTOR

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

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

9. MAINTENANCE RATE PROVISIONS

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

b. REGULAR HOURS. The basic monthly rate for each make and model of Equipment shall entitle the Ordering Activity to the Maintenance Services as set forth in the applicable Manufacturer’s Maintenance Services Policy.

c. AFTER HOURS. Should the Ordering Activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist or in the applicable Manufacturer’s Maintenance Services Policy. Periods of less than one hour will be prorated to the nearest quarter hour.

d. TRAVEL AND TRANSPORTATION. If any charge is to apply, over and above the regular maintenance rates, because of the distance between the Ordering Activity location and the Contractor’s service area, the charge will be negotiated at the Task Order level.

e. QUANTITY DISCOUNTS. Quantity discounts from listed Maintenance Services rates for multiple Equipment owned and/or leased by a Ordering Activity are not provided under this schedule contract unless otherwise specified by a Manufacturer in the pricelist.

10. REPAIR SERVICE RATE PROVISIONS

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

11. REPAIR PARTS/SPARE PARTS RATE PROVISIONS

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

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

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

13. INVOICES AND PAYMENTS

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

   Payment for Maintenance Services of less than one month’s duration shall be prorated at 1/30th of the monthly rate for each calendar day.
1. **GLOSSARY OF DEFINITIONS**
   a. "Documentation" shall mean Manufacturer’s then current help guides, and manuals issued by Manufacturer and made generally available by Manufacturer for the Software whether online or in hard copy. Documentation shall include any updated Documentation that Manufacturer provides with any updates.
   
   b. "Maintenance Services" shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.
   
   c. "Maintenance Services Policy" shall mean the commercial terms describing a Manufacturer’s standard Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
   
   d. "Software" shall mean (i) the version of the computer program identified on the Schedule Contract Pricelist and (ii) updates to such programs.

2. **INSPECTION/ACCEPTANCE**

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

3. **GUARANTEE/WARRANTY**

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

     A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR

     B) AS PROVIDED IN (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF

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

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

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

4. **TECHNICAL SERVICES**

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

5. **SOFTWARE MAINTENANCE**

   a. Software maintenance as it is defined:

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

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

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

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

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

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

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

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

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

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

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

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

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

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

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

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

8. TERM LICENSE CESSION

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

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

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

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

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

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

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

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

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

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

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

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

Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Ordering Activity recommends to Contractor additional features, functionality, or performance or if Contractor retains generalized information hereunder that Contractor or its Manufacturer subsequently devotes at any other facility to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software if the infringement would have been avoided by the use

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

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

(8) Verification. At Contractor's written request, but not more frequently than annually, Ordering Activity shall furnish Contractor with a document signed by Ordering Activity's authorized representative verifying that the Software is being used pursuant to the provisions of this contract. To the extent permitted by and subject to an Ordering Activity's security requirements (including, but not limited to, use of cleared personnel, badging and other requirements), Contractor reserves the right to audit Ordering Activity's use of the Software no more than once annually at Contractor's expense. Contractor shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hour at Ordering Activity's facilities and shall not unreasonably interfere with Ordering Activity's business.

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

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

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

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

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

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

**11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

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

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

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

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

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

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

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

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

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

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

Table 1: Cloud Computing Services SIN

<table>
<thead>
<tr>
<th>SIN Description</th>
<th>Sub-Categories³</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Commercially available cloud computing services</td>
<td>1. Software as a Service (SaaS): Consumer uses provider’s applications on cloud infrastructure. Does not manage/control platform or infrastructure. Limited application level configuration may be available.</td>
</tr>
<tr>
<td>● Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing essential characteristics</td>
<td>2. Platform as a Service (PaaS): Consumer deploys applications onto cloud platform service using provider-supplied tools. Has control over deployed applications and some limited platform configuration but does not manage the platform or infrastructure.</td>
</tr>
<tr>
<td>● Open to all deployment models (private, public, community or hybrid), vendors specify deployment models</td>
<td>3. Infrastructure as a Service (IaaS): Consumer provisions computing resources. Has control over OS, storage, platform, deployed applications and some limited infrastructure configuration, but does not manage the infrastructure.</td>
</tr>
</tbody>
</table>

Table 2: Cloud Service Description Requirements

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

### 3. RESPONSIBILITIES OF THE CONTRACTOR

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

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

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

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

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

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

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

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

### 4. RESPONSIBILITIES OF THE ORDERING ACTIVITY

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

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

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

b. **Pricing of Cloud Computing Services**

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

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

a. Ordering Activity Information Assurance/Security Requirements Guidance

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

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

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

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

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

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

b. Deployment Model

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

c. Delivery Schedule

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

d. Interoperability

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

e. Performance of Cloud Computing Services

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

f. Reporting

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

g. Privacy

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

h. Accessibility

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

i. Geographic Requirements

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

j. Data Ownership and Retrieval and Intellectual Property

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

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

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

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

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3 NIST SP 800-122, “Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)”


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

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

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

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

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

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

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

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

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

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

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

a. NIST Essential Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Capability</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-demand self-service</td>
<td>• Ordering activities can directly provision services without requiring Contractor intervention.</td>
<td>Government procurement guidance varies on how to implement on-demand provisioning at this time. Ordering activities may approach on-demand in a variety of ways, including “not-to-exceed” limits, or imposing monthly or annual payments on what are essentially on demand services.</td>
</tr>
<tr>
<td></td>
<td>• This characteristic is typically implemented via a service console or programming interface for provisioning</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Capability</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad Network Access</td>
<td>• Ordering activities are able to access services over standard agency networks</td>
<td>• Broad network access must be available without significant qualification and in relation to the deployment model and security domain of the service. Contractors must specify any ancillary activities, services, or equipment required to access cloud services or integrate cloud with other cloud or non-cloud networks and services. For example, a private cloud might require an Ordering Activity to purchase or provide a dedicated router, etc., which is acceptable but should be indicated by the Contractor.</td>
</tr>
<tr>
<td></td>
<td>• Service can be accessed and consumed using standard devices such as browsers, tablets and mobile phones</td>
<td></td>
</tr>
<tr>
<td>Resource Pooling</td>
<td>Pooling distinguishes cloud services from offsite hosting.</td>
<td>• The cloud service must draw from a pool of resources and provide an automated means for the Ordering Activity to dynamically allocate them. Manual allocation, e.g. manual operations at a physical server farm where Contractor staff configure servers in response to Ordering Activity requests, does not meet this requirement. Similar concerns apply to software and platform models; automated provisioning from a pool is required. Ordering activities may request dedicated physical hardware, software, or platform resources to access a private cloud deployment service. However, the provisioned cloud resources must be drawn from a common pool and automatically allocated on request.</td>
</tr>
<tr>
<td>Rapid Elasticity</td>
<td>• Rapid provisioning and de-provisioning commensurate</td>
<td>• Rapid elasticity is a specific demand-driven case of self-service. Procurement guidance for on-demand self-service applies to rapid elasticity as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually negotiate other contractual arrangements for procurement and payment. ‘Rapid’ should be understood as measured in minutes and hours, not days or weeks. Elastic capabilities by manual request, e.g. via a console operation or programming interface call, are required. Automated elasticity which is driven dynamically by system load, etc. is optional. Contractors must specify whether automated demand-driven elasticity is available and the general mechanisms that drive the capability.</td>
</tr>
</tbody>
</table>

**Inheriting Essential Characteristics**

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

**Assessing Broad Network Access**

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

**Resource Pooling and Private Cloud**

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

b. NIST Service Model

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

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

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

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

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

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

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Service Model</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>IaaS as a Service</td>
<td>Select an IaaS model for service-based equivalents of hardware appliances such as virtual machines, storage devices, routers and other physical devices.</td>
</tr>
<tr>
<td></td>
<td>• IaaS services are typically consumed by system or device managers who would configure physical hardware in a non-cloud setting</td>
</tr>
</tbody>
</table>
## Service Model | Guidance
--- | ---
PaaS Platform as a Service | - The principal customer interaction with an IaaS service is provisioning then configuration, equivalent to procuring and then configuring a physical device.
- Examples of IaaS services include virtual machines, object storage, disk block storage, network routers and firewalls, software defined networks. Gray areas include services that emulate or act as dedicated appliances and are directly used by applications, such as search appliances, security appliances, etc. To the extent that these services or their emulated devices provide direct capability to an application they might be better classified as Platform services (PaaS). To the extent that they resemble raw hardware and are consumed by other platform services they are better classified as IaaS.

SaaS Software as a Service | - The principal customer interaction with a PaaS service is deployment, equivalent to deploying an application or portion of an application on a software platform service.
- A limited range of configuration options for the platform service may be available.
- Examples of complete PaaS services include:
  - A Linux/Apache/MySQL/PHP (LAMP) platform ready to deploy a customer PHP application.
  - A custom complete platform ready to develop and deploy a customer application in a propriatory language
  - A multiple capability platform ready to deploy an arbitrary customer application on a range of underlying software services.

The essential characteristic of a complete PaaS is defined by the customer’s ability to deploy a complete custom application directly on the platform. PaaS includes partial services as well as complete platform services. Illustrative examples of individual platform enablers or components include:
- A database service ready to deploy a customer’s tables, views and procedures.
- A queuing service ready to deploy a customer’s message definitions
- A security service ready to deploy a customer’s constraints and target applications for continuous monitoring
- The essential characteristic of an individual PaaS component is the customer’s ability to deploy their unique structures and/or data onto the component for a partial platform function.

Note that both the partial and complete PaaS examples all have two things in common:
- They are software services, which offer significant core functionality out of the box
- They must be configured with customer data and structures to deliver results

As noted in IaaS, operating systems represent a grey area in that OS is definitely a platform service but is typically bundled with IaaS infrastructure. If your service provides an OS but allows for interaction with infrastructure, please sub-categorize it as IaaS. If your service “hides” underlying infrastructure, consider it as PaaS.

Some minor configuration may be available, but the scope of the configuration is limited to the scope and then the permissions of the configuring user. For example, an agency manager might be able to configure some aspects of the application for their agency but not all agencies. An agency user might be able to configure some aspects for themselves but not everyone in their agency. Typically, only the Contractor would be permitted to configure aspects of the software for all users.

Examples of SaaS services include email systems, business systems of all sorts such as travel systems, inventory systems, etc., wiki’s, websites or content management systems, management applications that allow a customer to manage other cloud or non-cloud services, and in general any system where customers interact directly for a business purpose.

Gray areas include services that customers use to configure other cloud services, such as cloud management software, cloud brokers, etc. In general, these sorts of systems should be considered SaaS, per guidance in this document.
Deployment models (e.g. private, public, community, or hybrid) are not restricted at the SIN level and any specifications for a deployment model are the responsibility of the Ordering Activity. Multiple deployment model selection is permitted, but at least one model must be selected. The guidance in Table 4 offers examples of how services might be properly mapped to NIST deployment models and how the Contractor should interpret the deployment model characteristics. Contractors should take care to select the range of NIST deployment models most closely corresponding to each service offered.

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

Table 4: Guidance for Selecting a Deployment Model

<table>
<thead>
<tr>
<th>Deployment Model</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Cloud</td>
<td>The service is provided exclusively for the benefit of a definable organization and its components; access from outside the organization is prohibited. The actual services may be provided by third parties, and may be physically located as required, but access is strictly defined by membership in the owning organization.</td>
</tr>
<tr>
<td>Public Cloud</td>
<td>The service is provided for general public use and can be accessed by any entity or organization willing to contract for it.</td>
</tr>
<tr>
<td>Community Cloud</td>
<td>The service is provided for the exclusive use of a community with a definable shared boundary such as a mission or interest. As with private cloud, the service may be in any suitable location and administered by a community member or a third party.</td>
</tr>
<tr>
<td>Hybrid Cloud</td>
<td>The service is composed of one or more of the other models. Typically, hybrid models include some aspect of transition between the models that make them up, for example a private and public cloud might be designed as a hybrid cloud where events like increased load permit certain specified services in the private cloud to run in a public cloud for extra capacity, e.g. bursting.</td>
</tr>
</tbody>
</table>
 TERMS AND CONDITIONS APPLICABLE TO CONTINUOUS DIAGNOSTICS AND MITIGATION (CDM) TOOLS SIN 541519CDM

1. GLOSSARY OF DEFINITIONS
   a. “Documentation” shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment and/or Software whether on-line or in hard copy.
   b. “Equipment” shall mean the computer hardware identified on Attachment B to this schedule pricelist.
   c. “Equipment Maintenance Services” shall mean the equipment maintenance services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then-current Maintenance Services Policy.
   d. “Software Maintenance Services” shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.
   e. “Maintenance Services Policy” shall mean the commercial terms describing a Manufacturer’s standard Equipment or Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
   f. “Services” shall mean services associated with products, other than Software Maintenance Services, Equipment Maintenance Services, and training.
   g. “Software” shall mean (i) the version of the computer program identified on Attachment A; and (ii) updates to such programs.

2. SCOPE
   a. Special Item Number (SIN) 541519CDM Continuous Diagnostics and Mitigation (CDM) Tools is a solutions SIN. This SIN includes both Equipment and Software products and any associated services for the products to include installation, maintenance, and training.
   b. In addition to the terms and conditions of this CDM SIN: the terms and conditions of SIN 33411 shall apply to the purchase of Equipment provided under the CDM SIN; the terms and conditions of SIN 811212 shall apply to Equipment Maintenance Services provided under the CDM SIN; the terms and conditions of SINs 511210, 511210, and 54151 shall apply to Software and Software Maintenance Services provided under the CDM SIN; and the terms and conditions of SIN 611420 shall apply to the purchase of training courses provided under the CDM SIN.
   c. 541519CDM - Continuous Diagnostics and Mitigation Tools - SUBJECT TO COOPERATIVE PURCHASING - Includes Continuous Diagnostics and Mitigation (CDM) Approved Products List (APL) Equipment and Software products/tools and associated Services and Maintenance Services. The full complement of CDM subcategories includes tools, associated Maintenance Services, and other related activities such as training.
   d. The 5 subcategories CDM capabilities specified under this SIN are:
      1) Manage “What is on the network?”: Identifies the existence of hardware, software, configuration characteristics and known security vulnerabilities.
      2) Manage “Who is on the network?”: Identifies and determines the users or systems with access authorization, authenticated permissions and granted resource rights.
      3) Manage “How is the network protected?”: Determines the user/system actions and behavior at the network boundaries and within the computing infrastructure.
      4) Manage “What is happening on the network?”: Prepares for events/incidents, gathers data from appropriate sources; and identifies incidents through analysis of data.
      5) Emerging Tools and Technology: Includes CDM cybersecurity tools and technology not in any other subcategory.

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

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

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

Table 1: SIN to TFA mapping

<table>
<thead>
<tr>
<th>5 SIN Subcategories</th>
<th>15 CDM BPA TFAs</th>
</tr>
</thead>
</table>
| 1. Manage “What is on the network?” | ● TFA 1 – Hardware Asset Management  
● TFA 2 – Software Asset Management  
● TFA 3 – Configuration Settings Management  
● TFA 4 – Vulnerability Management |
| 2. Manage “Who is on the network?” | ● TFA 6 – Manage Trust in People Granted Access  
● TFA 7 – Manage Security-Related Behavior  
● TFA 8 – Manage Credential and Authentication  
● TFA 9 – Manage Account/Access/Manage Privileges |
| 3. Manage “How is the boundary protected?” for BOUND | ● TFA 5 – Manage Network Access Controls |
| 4. Manage “What is happening on the network?” for MNGEVT | ● TFA 10 – Prepare for Contingencies and Incidents  
● TFA 11 – Respond to Contingencies and Incidents |
| 4. Manage “What is happening on the” | ● TFA 12 – Design and Build in Requirements |
Focus: The primary focus of Manage Assets is to identify “What is on the network?”; that is, to identify the existence of hardware, software, configuration characteristics and known security vulnerabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Manage “What is happening on the network?”
Focus: Manage Events is responsible for preparing for events/incidents, gathering appropriate audit data from appropriate sources, identifying incidents through analysis of data, and performing ongoing assessment.

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

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

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

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

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

**Operate, Monitor and Improve**

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

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

**Ongoing Authorization**

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

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

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

**Design and Build in Security**

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

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

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

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

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

**5. Emerging Tools and Technologies**

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

**3. STANDARDS COMPLIANCE**

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

**4. ORDER**

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

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

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

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

**6. TECHNICAL SERVICES**

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

**7. PERFORMANCE OF SERVICES ASSOCIATED WITH PRODUCTS**

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

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

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

8. RESPONSIBILITIES OF THE CONTRACTOR

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

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

9. INVOICES FOR SERVICES

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

10. DESCRIPTION OF PRODUCTS AND SERVICES AND PRICING

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

11. TOTAL SOLUTION

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

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

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

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

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

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

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

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

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

10. “NO CHARGE” TRAINING
    “No charge” training is not available under the scope of this schedule contract.
TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 54151S)

1. GLOSSARY OF DEFINITIONS
a. “Service Provider” shall mean a Manufacturer or provider of the IT Professional Services offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.

b. “Statement of Work” shall mean the mutually agreed upon document between Contractor and Ordering Activity setting forth the description of services to be performed including milestones, any specifications and evaluation criteria.

2. SCOPE
a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Information Technology Schedule.

b. The Contractor shall provide services at the Contractor’s facility and/or at the Ordering Activity location, as agreed to by the Contractor and the Ordering Activity.

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

a. Performance incentives may be agreed upon between the Contractor and the Ordering Activity on individual fixed price orders or Blanket Purchase Agreements under this contract.

b. The Ordering Activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.

c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, Ordering Activities shall consider establishing incentives where performance is critical to the Ordering Activity’s mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

4. ORDER

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

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

5. PERFORMANCE OF SERVICES

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

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

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

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

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

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

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

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

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

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

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

7. INSPECTION OF SERVICES

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

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

9. RESPONSIBILITIES OF THE ORDERING ACTIVITY
Subject to applicable security regulations, the Ordering Activity shall permit Contractor access to all facilities necessary to perform the requisite IT Professional Services.

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

11. ORGANIZATIONAL CONFLICTS OF INTEREST
a. Definitions.

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

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

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

13. PAYMENTS
For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for services delivered. Progress payments shall be made only when authorized by the Statement of Work or task order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIAITION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIAITION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:

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

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

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

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

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

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

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

Functional Responsibilities & Education Requirements
Project Administration

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

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

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

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Project Manager

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

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

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

Implementation and Integration Consultant I

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

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

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

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

Implementation and Integration Consultant

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

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

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

Systems Analyst I

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

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

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

Systems Analyst II

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

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

Minimum Education: Bachelor’s Degree (Information Technology or Business) or equivalent professional experience.
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<thead>
<tr>
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<th>Contract Year 2019</th>
<th>Contract Year 2020</th>
<th>Contract Year 2021</th>
<th>Contract Year 2022</th>
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<td>$309.22</td>
<td>$316.33</td>
<td>$323.61</td>
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<td>$292.57</td>
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<td>$112.34</td>
<td>$114.81</td>
<td>$117.34</td>
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</table>
1. GLOSSARY OF DEFINITIONS
   a. "Service Provider" shall mean a provider of the Electronic Commerce Services offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.
   b. "Statement of Work" shall mean the mutually agreed upon document between Contractor and Ordering Activity setting forth the description of services to be performed including milestones, any specifications and evaluation criteria.

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

3. PERFORMANCE INCENTIVES FSS-60 Performance Incentives (April 2000)
   a. Performance incentives may be agreed upon between the Contractor and the Ordering Activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
   b. The Ordering Activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.
   c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, Ordering Activities shall consider establishing incentives where performance is critical to the Ordering Activity’s mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

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

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

6. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)
   a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties have agreed, the Contracting Officer shall either:
      i) Cancel the stop-work order; or
      ii) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
   b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
   c. The stop-work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this contract; and
   d. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
   e. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

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

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

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

10. INDEPENDENT CONTRACTOR

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

11. ORGANIZATIONAL CONFLICTS OF INTEREST

a. Definitions.

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

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

12. INVOICES

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

13. PAYMENTS

a. For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

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

c. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

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

14. INCIDENTAL SUPPORT COSTS

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

15. APPROVAL OF SUBCONTRACTS

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

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

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

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

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

COMMITMENT
To actively seek and partner with small businesses.
To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.
To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.
To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.
To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.
To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.
To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

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

SUGGESTED FORMATS FOR BLANKET PURCHASE AGREEMENTS

BEST VALUE BLANKET PURCHASE AGREEMENT FEDERAL SUPPLY SCHEDULE

(Ordering Activity Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) ______. Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

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

Signatures

Ordering Activity Date

Contractor Date

BPA NUMBER__________

(CUSTOMER NAME)
BLANKET PURCHASE AGREEMENT

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

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

MODEL NUMBER/PART NUMBER

*SPECIAL BPA DISCOUNT/PRICE

DELIVERY SCHEDULES / DATES

(2) Delivery:

DESTINATION

DELIVERY SCHEDULES / DATES

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

(4) This BPA does not obligate any funds.

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

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

OFFICE

________________________

________________________

________________________
POINT OF CONTACT

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

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

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

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

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

BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS”

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

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

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

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

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

Here is a general outline on how it works:

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

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

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

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<tr>
<th>Manufacturer Name</th>
<th>Supplieer Name</th>
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<td>A10 Networks, Inc.</td>
<td>MariaDB Corporation</td>
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<td>AINS, Inc.</td>
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<td>Allied Telecom Group, LLC</td>
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<td>CBT Nuggets, LLC</td>
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<td>Check Point Software Technologies, Inc.</td>
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EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached A10 Networks, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-3SF-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3001 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
A10 NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

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

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

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

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

OTHER PROVISIONS OF THIS ATTACHMENT A:

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

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

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

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

This Warranty is provided in lieu of all other rights, conditions and warranties. Contractor makes no other express or implied warranty with respect to the Software, Hardware, Products, Documentation or A10 Support, including, without limitation, any warranty of merchantability, fitness for a particular purpose and non-infringement of third party rights. Contractor does not warrant that any products will be error-free, or that any defects that may exist in its products can be corrected.

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

Phone Support - 90 days from date of purchase

During the 90-day Software Warranty period, phone support is offered 5 days per week (8:30 a.m. to 5:30 p.m. Pacific Time, Monday through Friday, except holidays). Calls left after hours will be returned the next business day. Access to Technical Support after this 90-day warranty period is on a commercially reasonable basis (unless a Support Contract is purchased for all systems owned by the Ordering Activity).
Contact Contractor through A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

Software Updates - 90 days from date of purchase

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

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

Advanced Hardware Replacement Service - 30 days from date of purchase

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

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

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

**BASIC SUPPORT SERVICE PROGRAM**

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

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

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

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

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

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

Advanced Hardware Replacement Service – 30 days from date of purchase

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

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

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

**GOLD SUPPORT SERVICE PROGRAM**

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

Phone Support – 1, 2 and 3 year terms from date of purchase
For the duration of the term purchased, phone support is offered 7 days per week 24 hours a day. Access to Technical Support under the Gold Support Service Program period is on a commercially reasonable basis and Contractor through A10 Networks will make every reasonable effort to provide fast and efficient service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gg) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

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

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

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

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

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

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

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

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

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

rr) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
This Universal Amendment to Software License Agreements for All Adobe Systems Incorporated Software License Agreements ("Amendment") is effective as of the date that it is fully executed ("Effective Date") and is between Adobe Systems Incorporated ("Adobe"), and the U.S. General Services Administration ("GSA"). In consideration of the mutual promises and covenants contained in this Amendment, the parties agree as follows:

1. Applicability
   a. This Amendment, agreed to by both parties, applies to GSA and any agency or organization ("Ordering Activity") that places an order for an Adobe Software product under Contract No. GS-35F-0511T (the "GSA Contract"). This Amendment, together with the applicable Software License Agreement or End User License Agreement for the applicable Adobe Software (each such license generally referred to herein as the "License Agreement"), governs the Ordering Activity's installation and use of such Adobe Software. This Amendment only applies to License Agreements for those Adobe Software products that Adobe expressly authorizes the GSA Contract holder to resell or distribute under the GSA Contract pursuant to a letter of supply between Adobe and such GSA Contract holder. Unless expressly stated to the contrary herein, all capitalized terms in this Amendment shall have the meaning ascribed to them in the applicable License Agreement for the applicable Adobe Software.
   b. Pursuant to Section 12.212 of the Federal Acquisition Regulations ("FAR"), Adobe and GSA agree that the modifications to the License Agreements are hereby modified by this Amendment as it pertains to use of Adobe's software by any Ordering Activity pursuant to a task order placed under the GSA Contract.
   c. This Amendment only applies to Ordering Activities of the U.S. Government (including agencies and departments from the Executive Branch, the Congress, or the Military) and independent Federal agencies that are authorized to purchase IT Schedule 70 goods and services under the GSA Contract. This Amendment shall not apply to prime contractors, state/local government entities, or other entities authorized to make purchases under the GSA contract. In addition, this Amendment shall apply to the Ordering Activity itself, shall only apply to the installation and use of the Adobe Software for official government business only on behalf of the Ordering Activity, and shall not apply to any individual who utilizes the Adobe Software Products for his or her personal use or for a use.

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

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

3. Costs and Fees: Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 134l(a)(l)(B), the U.S. Government does not agree to pay any future costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement obligating the U.S. Government to pay costs, fees, or damages, or to otherwise expend appropriations, are hereby deleted unless imposed after following the Dispute Resolution Procedures identified hereunder. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted.

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

5. Indemnification: Pursuant to 28 U.S.C. § 516, in the event of any claim against an Ordering Activity arising out of use of the Adobe Software, Adobe cannot assume responsibility for or control of the litigation or any settlement negotiations, provided however, that Ordering Activity (i) agrees that any litigation or settlement negotiation shall not bind Adobe, in any way, to the final outcome of any such litigation or settlement; (ii) shall not impair Adobe's own rights, defenses, or claims against the claimant, (iii) shall not have the right to settle any claim, make any admissions,
or waive any defenses on behalf of Adobe; and (v) shall in good faith reasonably cooperate and consult with Adobe during the course of settlement negotiations and prosecution of the claim and shall in good faith reasonably afford Adobe free access to all communications and documentations with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Adobe's request. Any contrary provisions in the License Agreement are hereby deleted. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(8), the U.S. Government does not agree to pay any costs, fees, or damages arising from claims against Adobe relating to the use of the software by any Ordering Activity. Any contrary provisions in the License Agreement are hereby deleted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

AINS, Inc.

AINS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

HELP DESK POLICY

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

Section - Contact Information

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

The AINS Help Desk can be reached by:
Email: support@ains.com; or
Telephone: (301) 670-2333

Section - Help Desk Escalation Procedure

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

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

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

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

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

Section - Response Times

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

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

On Site Support

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

Section - Legal Notices

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

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

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

SERVICE LEVEL AGREEMENT

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

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

System Availability

Service Level Goals. AINS shall use commercially reasonable efforts to provide Licensee with a Service Level of at least 99.9% uptime of the Hosted Software on a 24 hours per day, 7 days per week, 365 days per year basis (“Service Level Goal”). The Service Level is determined by subtracting from 100% the percentage of minutes during the month in which the Hosted Software was unavailable or inaccessible to Licensee. Service Levels below 99.5% will trigger a response to the Licensee and the beginning of an investigation within 1 hour. As deemed appropriate in AINS’ sole discretion, AINS will provide Licensee with a corrective action plan to restore Service Levels to at least 99.9%.

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

a. Scheduled Downtime for Preventative Maintenance;

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

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

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

System Stability

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

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

Redundancy, Backups, and Disaster Recovery

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

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

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

Preventative Maintenance.

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

b. Licensee acknowledges that AINS shall have the exclusive right to schedule and implement Preventative Maintenance measures, including those resulting in system and application downtime, rendering the Hosted Software temporarily inaccessible (“Scheduled Downtime”).

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

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

System Security

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

Licensee Obligations

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

Term, Termination, Duration

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

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

Service Credits/Remedies

AINS provides the following service credit program:

<table>
<thead>
<tr>
<th>Monthly Availability</th>
<th>Service Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%-99.9%</td>
<td>Customer credits AINS one (1) day service cost</td>
</tr>
<tr>
<td>99.9% to 99.5%</td>
<td>No service credits</td>
</tr>
<tr>
<td>Below 99.5%</td>
<td>AINS credits Customer for (Number of downtime hours - 3.6 hours) * one (1) day service cost</td>
</tr>
</tbody>
</table>

- Service credit shall be limited to a maximum of one (1) month of cloud service costs in a monthly reporting period.
- Customers are required to submit a service credit request to AINS within ten (10) days from the date the Customer receives the Monthly Report.
- Service credits are accrued for Customer and AINS through the life of the contract.

SERVICES AGREEMENT

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

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

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

TERMS AND CONDITIONS

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

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

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

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

1.4. **Support Services.** Support Services includes all functional and how-to product support. Typical issues include: basic Software how-to guidance, and basic software troubleshooting. Support Services do not include online training. Support Services may also be used as necessary for Maintenance Services if Licensee exceeds its purchased Maintenance Services.

1.5. **AINS Help Desk.** Unless otherwise agreed-upon in writing, all Services are provided to the Licensee via the AINS Help Desk. Use of the AINS Help Desk is subject to the current AINS Help Desk Policy. Extended Help Desk hours and on-site Services are available for purchase.

2. **Exclusions and Reservations**

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

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

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

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

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

2.6 AINS shall provide personnel for Services with such expertise and experience as deemed appropriate by AINS in its sole discretion.

3. **Licensee Obligations**

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

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

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

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

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

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

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

4. **Term and Termination**

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

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

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

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

6. **Warranties and Limitations on Liability**

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

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

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

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

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

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

7. **Independent Contractor**

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

**LICENSEE:** __________________________  **AINS, INC.**

__________________________  __________________________
Signature                  Signature

__________________________  __________________________
Authorized Representative  Authorized Representative

__________________________  __________________________
Date                      Date
SOFTWARE LICENSE AGREEMENT

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

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

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

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

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

TERMS AND CONDITIONS

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. License

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

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

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

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

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

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

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

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

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

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

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

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

3. License Exclusions

3.1. Except as expressly authorized herein, Licensee shall not cause or permit any:

(a) unauthorized access to or use of the Software;

(b) copying or modification of the Software or Documentation;

(c) reverse engineering, recompilation, translation, disassembly, or discovery of the source code of all or any portion of the Software;

(d) removal, minimization, blocking, or modification of or to any logos, trademarks, copyright notices, proprietary information notices, digital watermarks, or other notices of Company or its suppliers that are affixed to or included in the Software or Documentation;

(e) use of the Software for any illegal purpose or any purpose deemed by Company in its sole discretion to be offensive or otherwise harmful;

(f) distribution, disclosure, marketing, rental, lending, leasing, sale, resale, or transfer of the Software or the Documentation to any third party or Company competitor, or use of the Software for any dial-up, remote access, interactive, or other on-line service except as specifically provided and licensed as an integral part of the Software;

(g) disclosure of the results of Software performance benchmarks to any third party without Company’s prior written consent; or

(h) export of the Software in violation of UN embargoes or US laws and regulations, including the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

4. Purchasing, Fees and Payment

Licensee shall provide Company with a Purchase Order detailing the Software to be licensed, including:

(a) The number of Seats, Users, Servers, or CPUs to be licensed, and the Maximum Usage;

(b) The cost per Seat, User, Server or CPU to be licensed; and
6. Defense and Indemnification

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

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

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

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

6.2.

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

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

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

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

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

(a) modify the Software to be non-infringing;

(b) obtain for Licensee a license to continue using the Software;

(c) substitute the Software with other software reasonably suitable to Licensee; or
6.5 THIS SECTION 6 STATES COMPANY’S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

6.6 Company shall indemnify and hold the Licensee harmless from any and all claims, actions, damages, and liabilities (including reasonable attorney's fees) arising directly and proximately out of the Company’s: (a) Negligent, wanton, reckless, or willful conduct resulting in death or bodily injury, including death, or damage to any real or tangible personal property; (b) Criminal act, whether or not subject to formal charges; and/or (c) Exceeding its authority to legally bind the other Party. Each Party agrees to give the other reasonable notice of any such claims or demands.

7. Warranties

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

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

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

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

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

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

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

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

8. Limitations and Disclaimers of Liability

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

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

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

9. Confidentiality

9.1. “Confidential Information” is defined as any and all information that the disclosing Party considers to be confidential, proprietary, non-public business information or a trade secret, in any form whatsoever, including, but not limited to, discoveries, concepts and ideas, regarding: (i) Product or service information, including designs and specifications, development plans, patent applications, and strategy; (ii) Marketing information, including...
lists of potential or existing customers or suppliers, marketing plans, and surveys; (iii) Computer software, including codes, flowcharts, algorithms, architectures, menu layouts, routines, report formats, data compilers, and assemblers; (iv) Financial information, including sales, and revenue information; and (v) Any other information identified as Confidential by either Party.

9.2. “Confidential Information” does not include any information that: (i) Is in the public domain at the time of disclosure without any breach of this agreement by the receiving Party; (ii) Is already known to the receiving Party at the time of disclosure without any breach of this agreement by the receiving Party; or (iii) Becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party which the receiving Party has no reasonable basis to believe is prohibited from disclosing such information to the receiving Party. Company recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

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

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

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

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

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

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

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

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

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

10. Maintenance and Support Services

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

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

11.1. Company conducts ongoing security assessments in connection with its SaaS and hosted offerings, and maintains a secure, FEDRAMP, FISMA, and FIPS, compliant, datacenter at its headquarters in Gaithersburg, Maryland.

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

12. Restricted Release

12.1. If Licensee is selected for participation and elects to participate in a Restricted Release program, Licensee agrees:

(a) Company shall have no obligation to correct errors in, deliver updates to, or otherwise support a Restricted Release;

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

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

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

13. Notices

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

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

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

14. Governing Law

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

15. Term and Termination

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

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

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

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

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

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

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

16. General

16.1. For purchases by agencies and representatives of the U.S. Government, the Software is a “commercial item”, as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of “commercial computer software” and “commercial computer software documentation”, as such terms are used
in 48 C.F.R. 12.212 (Sept 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government end users acquire the Software with only those rights set forth herein.

16.2. For purchases made against Company’s General Services Administration (GSA) Schedule, the terms and conditions of Company’s GSA Schedule or Purchase Order(s) shall control in the event of a conflict between such terms and conditions and those contained herein (Company’s GSA Schedule is available at https://www.gsaadvantage.gov/ref_text/GS35F4747G/00QCDU.37HKQI_GS35F4747G_GS-35F-4747G-4-21-2015-275778.PDF).

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

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

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

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

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

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

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

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

16.11. Each provision of this Agreement is severable. If any provision or any portion of any provision of this Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, all other provisions shall remain in full force and effect. Any provision or any portion of any provision of this Agreement that is held to be unenforceable shall be modified only to the extent necessary so that it shall be legally enforceable to the fullest extent permitted by law, and in such a way that is consistent with the intent and economic effect of the affected provision.

16.12. This agreement does not establish a teaming, joint venture, joint employer, partnership or other business relationship between the Parties. Unless explicitly stated, nothing in this agreement grants to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

16.13. Each Party hereby covenants and warrants that it is not aware of any potential or actual conflict of interest or other legal or contractual obligation that would in any way interfere with its ability to perform and uphold its obligations under this agreement.

16.14. Except as otherwise expressly provided in this Agreement, no waiver of any covenant, condition, or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants, or conditions of this Agreement or to exercise any option set forth in this Agreement shall not be construed as a waiver or relinquishment for the future of any such provisions, covenants, or conditions. No waiver by Company of one breach of this Agreement shall be construed as or deemed to be a waiver with respect to any other subsequent breach.

16.15. This Agreement and all of the terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

16.16. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

16.17. The parties agree that facsimile and/or electronic copies of this Agreement and/or signatures shall be binding to the same extent and in the same manner as if originally signed and transmitted by hand.

WHEREFORE, the undersigned having the power and authority to bind their respective Party as set forth above, AINS and Licensee agree to be so bound.

LICENSEE: _____________________ COMPANY: AINS, Inc.
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EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers such works may be based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

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

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

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ALLIED TELECOM GROUP, LLC

ALLIED TELECOM GROUP, LLC LICENSE, WARRANTY AND SUPPORT TERMS

1. Service Delivery & Acceptance - Prior to delivering Service to Ordering Activity, Contractor through ALLIED will perform test procedures to ensure that the Service conforms to the applicable technical specifications. Contractor through ALLIED shall notify Ordering Activity when the Service has been successfully installed and is available for Ordering Activity’s use (“In-Service Date”). If ALLIED makes the Service available to the Ordering Activity, but, Ordering Activity for whatever reason is not ready to accept and use the Service, billing for the installed Service shall nonetheless commence on the In-Service Date. This applies to circumstances including, but not limited to, if Ordering Activity does not have its own equipment in place to begin using the Service. Any use of a Service, other than for verification and acceptance testing, shall constitute immediate acceptance of the Service without the formality of executing an Acceptance Notice.
2. Required Maintenance – Contractor through ALLIED reserves the right to perform maintenance on or upgrade its network, its infrastructure, its service and its equipment without prior notice or liability. Such action may cause a partial or full disruption of the Service. However, and subject to ALLIED’s business needs, Contractor through ALLIED will use commercially reasonable efforts to perform maintenance on and upgrades to its network and the Service in a manner so as to avoid unduly interfering with Ordering Activity’s use of the Service.

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

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

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

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

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

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

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

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

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

b. Toll Fraud - Ordering Activity is responsible for ensuring that the Ordering Activity Premises Equipment (CPE) such as a PBX Key System or other multiline telephone system, provisioned on the Ordering Activity’s network is protected from fraudulent or unauthorized access. The Ordering Activity is responsible for payment of all charges on Ordering Activity’s monthly billing statement, including any charges resulting from fraudulent or unauthorized access to any CPE. Ordering Activity agrees to notify ALLIED promptly if it becomes aware of any fraudulent or unauthorized use of its account, Service, or equipment. ALLIED shall not be liable for any damages whatever resulting from fraudulent or unauthorized use of Ordering Activity’s account and the payment of all charges to Ordering Activity’s account shall be and remain the responsibility of Ordering Activity.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. APPIAN CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

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

   a. “Agreement” means these Attachment A terms and conditions and the attached schedules.
   c. “Appian Software” means an object code version of the software application, the Documentation and all updates, new versions, enhancements and corrections to the Appian Software received by Ordering Activity under this Agreement.
   d. “Contractor” means EC America, Inc.
   e. “Correction” means, without limitation, workarounds, support releases, component replacements, patches and/or Documentation changes, as Appian deems reasonably appropriate.
   f. “Ordering Activity” means Ordering Activity, Subscriber or End User identified in the applicable Order who receives a licenses and/or services under this Agreement.
   g. “Documentation” means the specifications, use case scenarios and instructions for the proper use of the Appian Software provided under the documentation section of the Appian Forum website, https://forum.appian.com or other URL as notified to Ordering Activity in writing from time to time and provided for informational purposes only.
   h. “Maintenance Services” is as defined in Section A(3) below.
   i. “User” means an employee, subcontractor or consultant of Ordering Activity, who (i) is compliant with the terms herein, and (ii) has an active user account in the Appian Software allowing him/her to authenticate into the Appian Software.
   j. “Order” means a purchase order from Ordering Activity.
   k. “Party” means, individually, Ordering Activity or Contractor, and “Parties” means Ordering Activity and Contractor, collectively.
   l. “Release” means a new version of the Appian Software identified by a decimal point move in the version number in the tenths place (e.g. 5.1 to 5.2). In the event of a full integer move in the version number (e.g. 5.7 to 6.0), the new integer number (6.0) will be considered the current Release.
   m. “Training” is as defined in Section A(5) of this Agreement.

2. SOFTWARE LICENSE GRANT:

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

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

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

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

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

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

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

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

e. Deleted.

f. Restrictions.

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

In addition, Ordering Activity may not:

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

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

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

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

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

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

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

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

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

3. MAINTENANCE AND SUPPORT SERVICES:

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

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

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Priority 2: <2 business hours  
Priority 3: <8 business hours  
Priority 4: <12 business hours | Priority 1: <15 minutes  
Priority 2: <1 hour  
Priority 3: <4 business hours  
Priority 4: <8 business hours |
| Primary Contact               | ☐☐              | ☐☐              |
| Proactive guidance            | ☐☐              | ☐☐              |
| Extended Technical Support and Security Defect Corrections | ☐☐ | 6 months |
| New release planning          | ☐☐              | ☐☐              |
| 24/7 Support for Priority 1&2 Issues | ☐☐ | ☐☐ |

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

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

Priority 2 Issue occurs when Users are unable to operate the Core Functionality on a production instance of the Appian Software using the User’s then current username and password. Core Functionality means the ability using the Appian Software to: (i) load a designer interface; (ii) publish a generic process; (iii) launch a generic process (including accepting a generic task and entering a generic form); (iv) access a generic dashboard; or (v) run a generic report.

Priority 3 Issue occurs when a production instance is negatively affected, but it is not a Priority 1 or 2.

All other issues are Priority 4.

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

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

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

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

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

i. For on-premise licenses to the Appian Software, malfunction of the computer system and communications network on which Ordering Activity has installed and is using the Appian Software;

ii. Use of the Appian Software contrary to the terms of the then current Documentation;

iii. Modifications, enhancements or customizations of the Appian Software;

iv. Any use of the Appian Software in disregard of any known adverse consequences, including without limitation;

v. Ordering Activity’s failure to make appropriate backups or to follow warning messages and other written instructions.

g. **MAINTENANCE SERVICES FEE:**

Annual Subscription The Premier Maintenance Services fee for the initial term of Maintenance Services is the percentage of the underlying license fee set forth in the applicable Order (Maintenance Services Percentage). Standard Support is included in the price Subscription fee. Maintenance Services must be purchased on all User licenses for the initial Maintenance Services term.

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

h. **SERVICES:**

a. **TRAINING**

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

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

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

b. ELITE SERVICES --- Reserved

i. LIMITED WARRANTY AND DISCLAIMER:

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

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

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

j. LIMITATION OF LIABILITY

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

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

iii) Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government’s right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.21572 Price Adjustment


k. INTELLECTUAL PROPERTY INFRINGEMENT

i) If a third party makes a claim against Ordering Activity that the Appian Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"), Contractor will to the extent permitted by 28 U.S.C. 516 (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (I) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (II) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (I) the use of a superseded or altered release of the Appian Software if the infringement would have been avoided by the use of a current unaltered release of the Appian Software, (II) the modification of the Appian Software, (III) the use of the Appian Software other than in accordance with the then current Documentation or this Agreement, or (IV) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

ii. If the Appian Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (i) replace or modify the Appian Software to be non-infringing, or (ii) obtain for Ordering Activity a license to continue using the Appian Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the license for the infringing Appian Software and refund the license fees paid for the Appian Software upon return of the Appian Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement; provided, however, if the license is for a cloud subscription described in Section B of this Agreement, then Appian shall only refund to Ordering Activity those license fees that were pre-paid and unearned at the time Appian terminates the license.

CLOUD SUBSCRIPTION AGREEMENT

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

1.1 “Agreement” means, collectively, this Cloud Subscription Agreement and any Order Forms.

1.2 “Cloud Offering” means Appian's baseline software (including all updates and enhancements to the same that Appian provides under section 4 of this Cloud Subscription Agreement), the Documentation, and the information technology infrastructure used to make Appian's software available to Subscriber over the Internet.

1.3 “Data” means the data, information or material that Subscriber or its Users submit to the Cloud Offering under this Agreement. Data shall not include anything initially provided to Subscriber by Appian.

1.4 “Documentation” means the contents provided under the documentation section of the Appian Community website, https://docs.appian.com, or other URL as notified to the Subscriber in writing from time to time.

1.5 “Order Form” means one or more order forms signed by the Parties or the purchase order issued by an Ordering Activity and accepted by the GSA Schedule-holder Contractor.

1.6 “User” means an employee, contractor or subcontractor of Subscriber who has a user account in the Cloud Offering allowing him/her to authenticate into the Cloud Offering.

2. SUBSCRIPTION

2.1 License. During the term of the subscriptions that Subscriber purchases, Appian grants Subscriber a non-transferable, nonexclusive license to access the Cloud Offering via a username and password over the Internet. Subscriber may use the licenses purchased under this Agreement for Subscriber's general business purposes, unless the applicable Order Form restricts Subscriber's use to a particular application, in which case Subscriber may only use the Cloud Offering in connection with the specified application.

2.2 Restrictions. Except to the extent expressly authorized in this Agreement or in the Documentation, Subscriber may not: (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Cloud Offering, (ii) operate the Cloud Offering for use by third parties or otherwise operate the Cloud Offering on a service bureau basis, (iii) modify, copy, reproduce or create a derivative from the Cloud Offering, in whole or in part, or (iv) allow, permit or assist any party to do any of the foregoing. In addition, unless expressly authorized by Appian in the applicable Order Form, Subscriber agrees not to use the Cloud Offering in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Cloud Offering or the failure of the Cloud Offering, could lead to death, personal injury, or severe physical or environmental damage.

2.3 Users Accounts. Only the identified individual associated with a particular User account can access the Cloud Offering using that account. User accounts may not be shared among individuals, or used to provide access to the Cloud Offering to individuals who are not the individual associated with the corresponding User account. Subscriber may not activate and de-activate User accounts on a daily or other regular basis in order to circumvent license restrictions. To the extent that Subscriber configures Appian's software to be accessed or used through a separate system or interface (e.g. “headless”), users of the Appian software through such separate system or interface must be licensed under this Agreement, regardless of whether such person has an Appian User account or authenticates into the Cloud Offering. If Subscriber exceeds the number of licensed Users set forth in the effective Order Form(s), Appian will invoice Subscriber for the excessive use and Subscriber will pay the invoice within thirty (30) days of the invoice receipt date. Subscriber shall either discontinue the excessive use, or Subscriber may purchase such additional User subscriptions necessary to bring Subscriber into compliance for the remainder of the term of Subscriber's current subscription. Such additional User subscriptions shall be at Appian’s current GSA Schedule list fees irrespective of any discounts offered to Subscriber in any Order Form.

2.4 Subscriber Responsibilities. Subscriber must use the Cloud Offering in accordance with all applicable laws. Subscriber is responsible for the password security of User accounts and the level of access granted to an individual User by Subscriber’s Cloud Offering administrators, as well as any other security configurations set by Subscriber. Subscriber is responsible for any violation of this Agreement by its Users. Subscriber shall promptly report to Appian any copying or distribution of the Cloud Offering in violation of this Agreement that is known or suspected by Subscriber and provide Appian with reasonable assistance to stop such violation.
2.5 **Security.** Appian will maintain an annual Service Organization Control (SOC) Report (or other similar or replacement report as the industry adopts) in connection with the Cloud Offering ("SOC Report"). Subject to agreed upon usage terms, Appian will provide Subscriber with Appian’s then current SOC Report. During the term of this Cloud Subscription Agreement, Appian will maintain such security measures identified in the then current SOC Report or, if Appian determines that more effective measures should be implemented, apply such replacement security measures. Subscriber may perform security testing with respect to the Cloud Offering, but only with Appian’s prior written consent, not to be unreasonably withheld.

2.6 **Intellectual Property Rights.** The Cloud Offering and all intellectual property rights therein are licensed to Subscriber, not sold. All rights in the Cloud Offering not provided to Subscriber under this Agreement are retained by Appian and its licensors.

3. **DATA** As between the Parties, the Data belongs to Subscriber. Subscriber is responsible for responding to any notices sent to Subscriber (or any User) by any third party claiming that the Data violates such party’s rights. Subscriber grants Appian a worldwide, irrevocable, royalty-free, nonexclusive, sublicensable right during the term of this Cloud Subscription Agreement to use the Data for the purposes of providing the Cloud Offering to Subscriber. Appian shall backup the Data on a nightly basis. The Data shall be retained for at least twenty eight (28) calendar days.

4. **MAINTENANCE SERVICES**

4.1 **Maintenance Services.** Appian shall provide Subscriber with the following maintenance services (“Maintenance Services”) during the term of the Subscriber's subscription to the Cloud Offering:

   a. **Updates.** Appian will install the upgrades and patches to the Cloud Offering that become available.

   b. **Technical Support.** Subscriber shall designate up to two (2) Subscriber employees to coordinate Subscriber’s requests for Maintenance Services. Subscriber’s Maintenance Services contacts may report problems and seek assistance regarding Subscriber’s use of the Cloud Offering using Appian’s online technical support case management system, by telephone using Appian’s authorized technical support phone line, or using any other means that Appian may authorize from time-to-time. Subscriber’s Maintenance Services contacts may track Technical Support requests using Appian’s case management system. Subscriber shall email support@appian.com with Subscriber’s Maintenance Services contacts promptly on or after the Effective Date. Subscriber may change its Maintenance Services contacts using Appian’s case management system.

4.2 **Remote Maintenance Only.** Maintenance Services do not include on-site or in-person assistance or consultation, or training that would normally be provided in formal training classes.

4.3 **Scheduled Maintenance.** Appian may specify up to a contiguous four (4) hour period during off peak hours when the Cloud Offering will not be available and during which Appian can provide any needed maintenance. Appian will use reasonable efforts to provide one week prior notice of all scheduled maintenance periods, provided that Appian may without prior notice suspend the Cloud Offering to install emergency patches or other urgent corrective measures.

5. **RESERVED.

6. **RESERVED.

7. **RESERVED.

8. **LIMITED WARRANTIES AND DISCLAIMERS**

8.1 **Service Level Agreement.** Appian shall provide the Service Level Agreement attached to this Cloud Subscription Agreement as Schedule 1 in connection with the Cloud Offering.

8.2 **Virus.** Prior to delivery of the Cloud Offering to Subscriber, Appian will first scan the same using commercially available up to date virus detection software, and will remediate any issue discovered by such software.

8.3 **Limited Warranty, Disclaimer.** APPIAN WARRANTS THAT THE CLOUD OFFERING WILL, FOR THE TERM OF A SUBSCRIPTION PERFORM SUBSTANTIALLY IN ACCORDANCE WITH APPIAN CLOUD SERVICE LEVEL AGREEMENT. Subject to the limitations set forth below, Appian warrants that it shall perform the Maintenance Services in a professional and workmanlike manner consistent with prevailing industry practices. In the event of a breach of this warranty Appian shall, as Customer’s exclusive remedy, use commercially reasonable efforts to re-perform the non-conforming Professional Services as soon as reasonably practicable, and at no additional cost to Customer. Customer must notify Appian of any breach of this maintenance service warranty in writing within five (5) business days after the non-conforming services are provided to Customer.

EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES PROVIDED IN CONNECTION WITH THE CLOUD OFFERING AND MAINTENANCE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **LIMITATION OF LIABILITY** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CAUSE OR ACTION (INCLUDING CONTRACT, NEGLIGENCE, TORT OR STRICT LIABILITY) ARISING FROM OR OUT OF THIS AGREEMENT FOR (a) ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND (b) AGGREGATE LIABILITY OF GREATER THAN THE FEES ACTUALLY PAID BY SUBSCRIBER UNDER THIS PURCHASE ORDER.

OBLIGATIONS UNDER SECTION 10 OF THIS CLOUD SUBSCRIPTION AGREEMENT AND SUBSCRIBER’S OBLIGATION TO MAKE PAYMENTS AS DUE SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN 9(b) ABOVE. IN ADDITION, DAMAGES ASSOCIATED WITH EITHER PARTY VIOLATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN SECTIONS 9(a) OR 9(b) ABOVE. THE LIMITATIONS SET FORTH IN THIS SECTION ARE INDEPENDENT OF ANY LIMITED REMEDY SET FORTH HEREIN, SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

10. **RESERVED.

11. **RESERVED.

12. **GENERAL**

12.1 **RESERVED.**
12.2 Relationship. This Agreement does not create a joint venture, partnership, employment, or agency relationship.

12.3 Marketing. To the extent permitted by GSAR 552.203-71, and with the Subscriber’s prior written consent, (a) Appian may publicly identify Subscriber as an Appian customer and uses its logo on Appian’s website and in presentations to current or prospective customers or investors; (b) Appian may issue a mutually agreed upon press release announcing Subscriber’s status as an Appian customer; (c) reserved; and (d) upon successful launch of an application in the Cloud Offering, Appian may record and produce a video concerning Subscriber’s use of Appian for such application, which may be distributed via Appian.com.

12.4 Severability. If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision’s essential purpose.

12.5 Waiver. The waiver by either Party of a breach or right under this Agreement will not constitute a waiver of any other or subsequent breach or right.

12.6 RESERVED.

12.7 RESERVED.

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

12.9 RESERVED.

12.10 Survival. Provisions herein which by their nature extend beyond the termination of this Agreement shall remain in effect until fulfilled.

Appian Cloud
Service Level Agreement

1. DEFINITIONS - The terms defined in this Section 1 as well as terms defined in the Cloud Subscription Agreement (or similar master terms and conditions) agreed to between the parties (the “Agreement”) are applicable to this Service Level Agreement. Subscriber’s level of Service (Standard or Premier) will be identified in Subscriber’s Order Form.

a. Core Functionality means the ability to use the Cloud Offering to: (i) load a designer interface; (ii) publish a generic process; (iii) launch a generic process (including accepting a generic task and entering a generic form); (iv) access a generic dashboard; or (v) run a generic report.

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

c. High Availability - High Availability means that Subscriber’s production instance of the Cloud Offering will be provided simultaneously through three Availability Zones without a single point of failure. (Appian’s standard Cloud Offering provides service through a single Availability Zone only.) Each Availability Zone will be located in the Subscriber’s selected region. Appian will maintain such servers and storages necessary to keep up to date with Subscriber’s applications and data in order to operate Subscriber’s Cloud Offering in such three Availability Zones. As a part of the High Availability Offering, Appian will provide Subscriber with a Recovery Point Objective (RPO) of 1 minute and a Recovery Time Objective (RTO) of 15 minutes. RPO means that the Subscriber data restored to the High Availability Cloud Offering will be no older than 1 minute prior to the event that led to the Cloud Offering no longer writing data to the High Availability database servers. RTO means that the High Availability Cloud Offering will be unavailable for no longer than 15 minutes in the event of unscheduled unavailability of the Cloud Offering for any reason within the control of Appian or Appian’s service providers. Appian’s exclusive obligation and Subscriber sole remedy for any failure by Appian to meet the RTO or RPO in a month will be Subscriber’s right to a 100% Service Credit against the Premier Support (including High Availability for Production) fees payable for that month.

d. Issue means, collectively, a Priority 1, Priority 2, Priority 3 or Priority 4 Issue.

   i. Priority 1 Issue means a User is unable to access the login page on a production instance of the Cloud Offering using the User’s then current username and password.

   ii. Priority 2 Issue means a User is unable to operate the Core Functionality on a production instance of the Cloud Offering using the User’s then current username and password.

   iii. Priority 3 Issue means a functional feature of the Cloud Offering is impacted, but it is feasible to continue production/development, as the issue is not critical or a workaround is feasible.

   iv. Priority 4 Issue means all other issues which are not Priority 1, 2 or 3.

e. Proactive Guidance means advice from an Appian lead engineer on issues that may affect performance of Subscriber’s instance of the Cloud Offering.

2. SERVICE OBLIGATIONS - Appian’s service obligations are dependent on Subscriber’s level of Service, as set forth in the following chart:
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<th>Premier</th>
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*Features are described at docs.appian.com

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<th>Case Severity</th>
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<td>&lt;2 business hours</td>
<td>&lt;1 hour (24x7x365)</td>
</tr>
<tr>
<td>Priority 3</td>
<td>&lt;8 business hours</td>
<td>&lt;3 business hours</td>
</tr>
<tr>
<td>Priority 4</td>
<td>&lt;12 business hours</td>
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</tbody>
</table>

A. **Response Measurements** - Appian will use commercially reasonable efforts to respond to issues within the response times listed. A Priority 1 or 2 Issue shall be deemed reported, and Appian’s response time shall commence, once Subscriber reports the issue as a Priority 1 or 2 issue using Appian’s authorized telephone support number. A Priority 3 Issue or Priority 4 Issue shall be deemed reported, and Appian’s response period shall commence, once Subscriber reports the Priority 3 Issue or Priority 4 Issue using any authorized methods for requesting Technical Support. Appian will be deemed to have responded to an issue once it responds that it has received the issue (an automated email response shall not count as a response). Business hours are 8:00 a.m. to 8:00 p.m. (US ET), Monday through Friday, excluding Appian holidays.

B. **Availability** - Subject to the exclusions noted below, if in any given month Subscriber reports a Priority 1 or 2 Issue, and it takes Appian longer than the percentage of time occurring in the applicable month noted below (“Aggregate Availability”) to provide a corresponding Correction in
In accordance with the applicable Technical Support service hours, Appian will provide Subscriber with a credit of the percentage of the applicable monthly subscription fee in effect during the applicable month in the amount described below (each such credit is referred to as a “Service Credit”). The Aggregate Availability for Priority 1 Issues is calculated as 100 percent minus the quotient of the time required by Appian to provide Corrections for all Priority 1 Issues reported in a month, divided by the total number of minutes occurring in that month. Likewise, the Aggregate Availability for Priority 2 Issues is calculated as 100 percent minus the quotient of the time required by Appian to provide Corrections for all Priority 2 Issues reported in a month divided by the total number of minutes occurring in that month. The Service Credits are Appian’s exclusive obligation, and Subscriber’s sole remedy associated with any issues. A Priority 1 Issue may not be reported both as a Priority 1 and a Priority 2 Issue.

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Monthly Availability %</th>
<th>Service Credit*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>&lt;99.95% but ≥ 99.0%</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>&lt;99.0%</td>
<td>30%</td>
</tr>
<tr>
<td>Priority 2</td>
<td>&lt;99.0%</td>
<td>15%</td>
</tr>
</tbody>
</table>

*Credit percentages are as a percentage of monthly applicable Subscription Fee. If the Subscription Fee for the Cloud Offering is paid other than monthly, the monthly subscription fee shall be calculated as the pro rata equivalent of one month of the subscription fee specified in the applicable Order Form.

c. **Requesting Service Credits** - Subscriber must request Service Credits, in writing, within 30 calendar days after Appian provides the corresponding Correction. Service Credits not requested within this time shall expire.

d. **Exclusions.** Issues caused by any of the following situations shall not trigger Appian’s obligations under this Service Level Agreement:

i. Any time the Cloud Offering is not available as a result of scheduled maintenance activities, Subscriber initiated maintenance or any other agreed-to scheduled downtime activity;

ii. Unavailability of or errors in the Cloud Offering due to the following, to the extent developed by or incorporated by Subscriber or its agents: (I) modifications or plug-ins to the Cloud Offering, or (II) unsupported programming, unsupported integrations or malicious activities;

iii. Unavailability of or errors in the Cloud Offering as a result of Subscriber using the Cloud Offering contrary to the then current Documentation;

iv. Events outside Appian’s reasonable control, not caused by Appian’s fault or negligence, or Subscriber provided infrastructure or integration being unavailable;

v. Any time the Cloud Offering is not available as a result of Subscriber exceeding the resources allocated under the applicable Order Form, as described in the configuration and associated infrastructure section of the Order Form.

e. **Termination** - Subscriber may terminate the Agreement for cause if Appian refunds to Subscriber the maximum amount of Service Credits to Subscriber for Priority 1 Issues in any two consecutive months, provided Subscriber notifies Appian of its intent to elect this remedy, in writing, within 30 calendar days after the second month.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Price List, Manufacturer's Specific Terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

ARUBA NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. LICENSE

Subject to Ordering Activity’s (herein also referred to as “You” or “Your”) full compliance with all the terms and restrictions set forth in this Attachment A, Contractor grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sub licensable license to use the Aruba software programs (“Programs”).

The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs (“Controls”). Contractor and Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Contractor or Aruba responsible for such usage of such Controls.

2. PROPRIETARY RIGHTS

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, “Support Enhancements”). Support Enhancements will be considered Programs for purposes of this Attachment A, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, know-how, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Attachment A, you shall hold in confidence and protect, and shall not use (except as expressly authorized by this Attachment A) or disclose, Proprietary Information to any third party.

3. RESTRICTIONS ON USE AND TRANSFER

A. Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may only be run directly on Aruba's hardware platforms or on an Aruba-provided virtual machine, except that Programs specifically designed by Aruba to operate on third party hardware platforms may be run on such third party hardware platforms. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Contractor through Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Contractor through Aruba. You may physically transfer the base operating system Programs and this Attachment A to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Attachment A, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Contractor through Aruba, and (iv) you comply with all applicable laws including any import/export control regulations. Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

B. You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.

C. You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) to any third party without the express prior written consent of Contractor through Aruba. You may not engage a third party to perform security testing on the Programs unless that third party enters into a written non-disclosure agreement directly with Aruba.

D. You understand and agree that some of the Programs are designed to automatically communicate certain network parameters and other information about the Programs and their performance back to Aruba. Aruba uses this information (a) to monitor the performance of the Programs; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with Aruba's legal obligations and to protect Aruba's legal rights. Aruba will not use any information gathered in this manner for any other purpose.

4. LIMITED WARRANTY AND DISCLAIMER

Contractor warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such media should occur during this 90-day period, the media may be returned to Contractor through Aruba (or if you received such Programs from a reseller, to such reseller) and Aruba or the reseller, as applicable, will replace the media without charge to you. Contractor shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

ALL THIRD PARTY PROGRAMS ARE PROVIDED AS-IS AND CONTRACTOR EXPLICITLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR THE PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY PROGRAMS.

CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE.

EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND
ARUBACARE TERMS AND CONDITIONS

1. Definitions

1.1. “Access Point Supported Product” means the Aruba Access Points, antennas, Access Point accessories and Wireless Mesh products, for which ArubaCare Support is purchased by Customer.

1.2. “AirWave Software” means the multi-vendor management software provided by Aruba under the brand name AirWave for which ArubaCare support is purchased by Customer.

1.3. “Customer Technical Personnel” means any of the designated employees of Customer who have undergone training regarding the proper operation of the Supported Products.

1.4. “Documentation” means Aruba’s published user manuals for the Supported Products that are furnished to Customer by Aruba.

1.5. “Error” means a material failure of the Supported Product to operate substantially in accordance with the applicable Documentation.

1.6. “Hardware” means the physical hardware components of the Supported Product.

1.7. “Maintenance Release” means a grouping of bug fixes related to a particular feature release that is denoted by a change to the right of the second decimal point (e.g., 2.1.1 or 2.1.2).

1.8. “Major Release” means any new version or release of the Software that includes substantial new functionality or features that is denoted by a change to the left of the first decimal point (e.g., 2.0 or 3.0).

1.9. “Minor Release” means any new version or release of the Software that includes some new functionality or features that is denoted by a change to the right of the first decimal point (e.g., 2.1 or 2.2).

1.10. “Patch Release” means a customer specific release to be delivered in the event of an emergency in Aruba’s determination that is denoted by a change to the right of the third decimal point (e.g., 2.1.1.1 or 2.1.1.2).

1.11. “Renewal Term” has the meaning set forth in Section 6.1 (Term).


1.13. “Software” means the software components of the Supported Product.


1.15. “Support Services” means the services to be performed by Aruba pursuant to this Agreement.

1.16. “System Supported Product” means the Aruba Mobility Controllers, Chassis, Line Cards, Power Supplies, Supervisor Cards, Spares and Software for which Customer must purchase ArubaCare Support as a unit.

2. ARUBACARE SUPPORT

2.1. Technical Support – refer to Section 3 of this Agreement

2.2. Advance Hardware Replacement. If the System Supported Product, or Access Point Supported Product if purchased, when used as intended under normal operating conditions, fails to perform in substantial accordance with the Documentation, Ordering Activity (herein also referred to as “Customer”) shall promptly notify Contractor through Aruba via email of such failure, including details of the failure that are sufficient to permit Aruba to diagnose and replicate the problem. If the failure is of a character that Aruba determines requires factory repair, then Aruba will use commercially reasonable efforts to ship replacement Hardware after making such determination, based on the schedule set forth in Attachment A. Within thirty (30) days after notice of failure, Customer will (a) obtain a Return Merchandise Authorization (RMA) number from Aruba; (b) pack
the Hardware to protect it from damage while in transit; and (c) ship the nonconforming Hardware to Aruba, with the RMA number clearly displayed on the exterior of the package. If, after attempting to repair the Hardware, Aruba finds no Error in the Hardware, then Aruba may charge Customer a reasonable replacement charge consistent with the Schedule Price List. If Customer fails to ship the nonconforming Hardware to Aruba within thirty (30) days after notice of failure, Aruba will invoice the Customer the list price of the Hardware.

2.3. Releases. Upon purchase of ArubaCare, Customer will be entitled to obtain and use all Major, Minor, Maintenance, and Patch Releases that are made available by Aruba for the Supported Product during the term of this Attachment A. Aruba may make such Major, Minor, Maintenance, and Patch Releases available to Customer through electronic download or on optical, magnetic, or other removable media. The provision of any Major, Minor, Maintenance, and Patch Release to Customer will not operate to extend the original warranty period on the Software in the Supported Product. Customer can download the Major, Minor, Maintenance, and Patch Releases from the Aruba Support Center at https://support.arubanetworks.com.

2.4. Intellectual Property. Upon the provision of a Release to Customer, such Release will be deemed to be licensed under the terms and conditions of the software license herein, and Customer will acquire license rights to use such Release in accordance with the terms and conditions herein. There are no express or implied licenses in this Attachment A, and all rights are reserved to Aruba.

2.5. On-Site Support. Unless Customer has purchased ArubaCare Same-Day Onsite Support, ArubaCare support is a remote service, and DOES NOT include any provisions for on-site support. At Contractor through Aruba’s discretion and with approval of the Customer, Aruba may send a resource on site for troubleshooting purposes. Contractor may invoice Customer for time and materials in accordance with Contractor’s then-current GSA rates. If Customer has purchased ArubaCare Same-Day Onsite Support (for controllers only), a technician will arrive on site to replace the defective unit. This is a hardware replacement service only. Onsite technicians are not deployed to help with troubleshooting or gathering packet captures, etc. The technicians can help assist with installing and testing the replacement Hardware under the guidance of the Customer in order to restore basic IP connectivity.

2.6. Wireless Mesh Support. Support for Wireless Mesh Products purchased prior to August 21, 2010 from Azalea is available on Monday(s)-Friday(s) from 8 am – 5 pm Pacific Time. For Priority 1 issues Customer should call 1-800-943-3526 or within China at +86-10-58851177 and Aruba will respond within one business hour.

2.7. Scope of Support for AirWave Software. Contractor through Aruba will provide telephone support on general questions regarding installation, configuration and usage of the AirWave Software. This telephone support will not include (i) the configuration of third party products, except to the extent the call relates to AirWave’s support of those products and other issues that are not generally addressed in AirWave’s Documentation.

3. ARUBACARE TECHNICAL SUPPORT SERVICES

3.1. Telephone and E-mail Support

(a) Telephone Support. Contractor through Aruba will provide telephone support for the use of the Supported Product with its ArubaTAC customer service center twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year. Aruba will use commercially reasonable efforts to provide an initial response within one (1) hour of Customer contacting ArubaTAC for Priority 1 issues (as defined in section 3.2). ArubaTAC is staffed by experienced engineers trained to provide customer assistance for the Supported Products.

(b) Generally. All telephone support will be provided solely to Customer Technical Personnel, and will consist of answering questions regarding the proper operation of the Software, providing troubleshooting assistance, and rendering general information, advice, and instructions in connection with the end use of the Supported Product. Customer will be responsible for providing first-line helpdesk support for individual end-users of the Supported Product, and Customer will be responsible for screening first-line technical inquiries and escalating to Contractor through Aruba only those issues that cannot be resolved by the Customer Technical Personnel. Aruba will have no obligation to accept calls directly from, or otherwise interact directly with, personnel other than the Customer Technical Personnel.

<table>
<thead>
<tr>
<th>In the United States and Canada:</th>
<th>1-800-WIFI-LAN (1-800-943-4526)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of China (for Wireless Mesh only):</td>
<td>1-800-943-3526</td>
</tr>
<tr>
<td>China (for Wireless Mesh only):</td>
<td>+86-10-58851177</td>
</tr>
<tr>
<td>International:</td>
<td>1-408-754-1200</td>
</tr>
</tbody>
</table>

(c) E-mail Support. Alternatively, Customer may submit technical inquiries to Aruba via e-mail, at support@arubanetworks.com. Contractor through Aruba will use commercially reasonable efforts to respond to e-mail within one (1) business day; however, Customer agrees and acknowledges that there may be delays in responses to inquiries submitted via e-mail.

3.2. Error Correction. If the Supported Products exhibit an Error, the Customer will promptly notify Contractor through Aruba of such Error, and Aruba will use commercially reasonable efforts to address the Error as described in this section.

(a) Priority Levels. If Customer identifies an Error, Customer will promptly report such Error in writing to Contractor through Aruba providing the serial number of the affected product (for hardware) and specifying (a) the nature of the Error; (b) the circumstances under which the Error was encountered; (c) technical information relating to the operating environment in which the Software was running at the time of the Error; (d) the steps, if any, that Customer took immediately following the Error; and (e) the immediate impact of the Error upon the ability of Customer’s network to function. Upon receipt of such Error report, Aruba will evaluate the Error and classify it into one of the following Priority Levels based upon the following priority classification criteria:

<table>
<thead>
<tr>
<th>PRIORITY LEVEL</th>
<th>PRIORITY CLASSIFICATION CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>Critical system or service outage in a live environment that results in a severe degradation of overall network performance and/or significant reduction in capacity.</td>
</tr>
</tbody>
</table>
### Table: Priority Levels

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 4</td>
<td>No impact on system or network operation. Information requests or standard questions on configuration or functionality of equipment.</td>
</tr>
<tr>
<td>Priority 3</td>
<td>Minor degradation of system or service performance that does not impact end-user service quality and minimal impact on network operations.</td>
</tr>
<tr>
<td>Priority 2</td>
<td>Intermittent degradation of system or service performance that impacts end-user service quality or impairs network operator control or operational effectiveness. Also includes loss of redundancy or diagnostic capabilities.</td>
</tr>
<tr>
<td>Priority 1</td>
<td>Major degradation of system or service performance that impairs end-user service quality or impairs network operator control or operational effectiveness. Also includes loss of redundancy or diagnostic capabilities.</td>
</tr>
</tbody>
</table>

### (b) Problem Resolution

1. **Priority Level 1 Errors.** Assuming the customer is willing to commit resources to resolve critical issues on a 24x7 basis, Contractor through Aruba will commit the same resources to work on a round-the-clock basis until a correction or workaround to the Priority Level 1 Error is found. Such corrections or workarounds may take the form of Maintenance or Patch Releases, procedural solutions, correction of Documentation errors, or other such remedial measures as Aruba may determine to be appropriate. Aruba will provide Customer with a problem resolution schedule and inform Customer of its progress on a daily basis. Priority Level 1 Errors will be downgraded to a Priority Level 2 upon the delivery of a workaround.

2. **Priority Level 2 Errors.** Contractor through Aruba will commit resources to formulate a correction or workaround to the Priority Level 2 Error within during Aruba’s normal business hours and in accordance with its existing release schedule. Such corrections or workarounds may take the form of Maintenance or Patch Releases, procedural solutions, correction of Documentation errors, or other such remedial measures as Aruba may determine to be appropriate. Aruba will provide Customer with a problem resolution schedule and inform Customer of its progress on a weekly basis.

3. **Priority Level 3 Errors.** Contractor through Aruba will commit to provide corrections or workarounds to Priority Level 3 Errors during Aruba’s normal business hours and in accordance with its existing release schedule. Such corrections or workarounds may take the form of Major, Minor, Maintenance, or Patch Releases, procedural solutions, correction of Documentation errors, or other such remedial measures as Aruba may determine to be appropriate.

4. **Priority Level 4 Errors.** Contractor through Aruba will commit to provide resources during normal business hours to provide information assistance or provide feedback.

3.3 **Aruba Support Center Web Site.** Customer may also access the Aruba Support Center at [http://www.arubanetworks.com/support](http://www.arubanetworks.com/support). The Aruba Support Center provides Customers with a Knowledge Base, FAQs, field alerts, release notes and product documentation to allow Customers to troubleshoot issues that they may be having with the Supported Products. The Aruba Support Center is available twenty four (24) hours per day, seven (7) days per week.

3.4 **Exclusions.** Notwithstanding anything to the contrary in this Attachment A, Contractor will have no obligation to provide any Support Services to Customer to the extent that Customer’s use of the Supported Products is in breach of this Attachment A or such Support Services arise from or relate to any of the following: (a) any modifications or alterations of the Supported Products by any party other than Aruba or Aruba’s subcontractors; (b) any use of a version of Software that has been declared ‘end of life’ by Aruba; (c) any use of the Supported Products in an environment not meeting the operating requirements set forth in the Documentation; (d) any issues arising from the failure of the Supported Products to interoperate with any other software or equipment, except to the extent that such interoperability is expressly mandated in the applicable Documentation; (e) any breakdowns, fluctuations, or interruptions in electric power or the telecommunications or cable network; (f) a force majeure event; or (g) any Error that is not reproducible by Aruba. In addition, Customer agrees and acknowledges that any information relating to malfunctions, bugs, errors, or vulnerabilities in the Supported Products constitutes confidential information of Aruba, and Customer will refrain from using such information for any purpose other than obtaining Support Services from Aruba, and will not disclose such information to any third party. Customer will be charged at Contractor’s then current GSA time and material rates for the services rendered by Contractor through Aruba if Aruba determines that no Error exists.

4. **CUSTOMER RESPONSIBILITIES.** As a condition to all of Aruba’s obligations under this Attachment A, Customer will provide the following:

1. **Trained Personnel.** Customer will ensure that all of its personnel who use the Supported Products in the course of their employment are familiar with the Supported Product to the extent necessary for them to operate the Supported Product with reasonable competence. Without limiting the generality of the foregoing, Customer will cause all Customer Technical Personnel to complete such training and instruction as Aruba may reasonably require from time to time. Upon the appointment of any new Customer Technical Personnel, Customer will take reasonable steps to expeditiously train the new individual to appropriate standards of technical competence.

2. **General Cooperation.** Customer will cooperate with Aruba to the extent that such cooperation would facilitate Aruba’s provision of Support Services hereunder. Without limiting the foregoing, at Aruba’s request, Customer will (i) provide Aruba with reasonable access to appropriate personnel, records, network resources, maintenance logs, physical facilities, and equipment; (ii) refrain from undertaking any operation that would directly or indirectly block or slow down any maintenance service operation; (iii) promptly inform Aruba of the physical location of the Supported Products and any changes thereto; and (iii) comply with Aruba’s instructions regarding the use and operation of the Supported Products, including ensuring that all equipment is safeguarded by adequate surge protection and backed up with a universal power supply. Customer agrees and acknowledges that Aruba’s obligations under this Agreement are limited to the Supported Products, and that Aruba is not responsible for the operation and general maintenance of Customer’s operating environment. Without limiting the foregoing, Customer will keep a detailed operations log for the Supported Products and will document any Errors that arise.

5. **RESERVED**

6. **RESERVED**
7. **LIMITED WARRANTY.**

Contractor warrants only to Customer that the Support Services will be performed with at least the same degree of skill and competence normally practiced by Aruba-trained technical support engineers performing the same or similar services. Customer’s remedy, and Contractor’s entire liability, for any breach of the foregoing warranty shall be for Contractor through Aruba to re-perform, in a conforming manner, any nonconforming Support Services that are reported to Contractor by Customer in writing within sixty (60) days after the date of completion of such Services. In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109. EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPH OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE SUPPORT SERVICES AND ALL MATERIALS FURNISHED TO CUSTOMER UNDER THIS ATTACHMENT A ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. CONTRACTOR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, GUARANTEES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SUPPORT SERVICES AND ANY MATERIALS FURNISHED HEREUNDER, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, ACCURACY, AND QUIET ENJOYMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS ATTACHMENT A IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION OTHER THAN THOSE SET FORTH IN THE PRECEDING PARAGRAPH.

8. **RESERVED**

9. **RESERVED**

**ATTACHMENT A**

Global Parts Advance Replacement Schedule (target arrival time)

**ArubaCare Same-Day**
For Customers who purchase ArubaCare Same-Day or ArubaCare Same-Day Onsite (where available) replacement parts will arrive within four (4) hours of Contractor through Aruba’s determination that the Supported Product is defective, provided that Customer has promptly informed Aruba of the physical location of the Supported Products. Customers agree that in some locations Aruba may need up to ninety (90) days from the delivery of the initial Support Products purchased by Customer to establish spare depots and identify and train technicians capable of offering on-site services. During this 90 day window, if a part is not available to be delivered same day, Aruba will make commercially reasonable efforts to deliver the replacement part as quickly as possible from the closest parts depot.

**ArubaCare Next-Day**
For Customers who purchase ArubaCare Next-Day, replacement parts will arrive next business day of Contractor through Aruba's determination that the Support Product is defective, provided that Customer has promptly informed Aruba of the physical location of the Supported Products. ArubaCare Next-Day is supported in all countries where Aruba is approved to sell product. Customers agree that in some locations Aruba may need up to ninety (90) days from the delivery of the initial Support Products purchased by Customer to establish spare depots. During this 90 day window, if a part is not available to be delivered next day, Aruba will make commercially reasonable efforts to deliver the replacement part as quickly as possible from the closest parts depot.

Calls must be received by the following times for next business day parts arrival based on region:

- 14:00 PST for United States and Latin America
- 14:00 EST for Canada
- 14:00 CET for EMEA
- 14:00 Singapore Time for APAC

**ATTACHMENT B**

Global Technical Support Numbers

Most current details can be found at: [http://www.arubanetworks.com/support/contact_support.php](http://www.arubanetworks.com/support/contact_support.php)

**North America**

Toll Free: 1-800-WiFi-LAN (1-800-943-4526) or +1-408-754-1200

support@arubanetworks.com

**Latin America**

Brazil:
- 800-4943-4526 *landline only*
- 55-21-3958-0828 *landline & mobile*

Chile: 1230-020-0372

Mexico: 01-800-123-1716

Other International: +1-408-754-1200

support@arubanetworks.com

**EMEA**

Belgium: Belgacom: 0-800-4943-4526
Denmark: 800-4943-4526
Egypt:
- 02-2510-0200-888-517-7267 * outside Cairo
- 2510-0200-888-517-7267 * within Cairo
Finland: 800-4943-4526
France: France Telecom: 00800-4943-4526
Germany: Deutsche Telkom: 00800-4943-4526
Ireland: EIRCOM: 00800-4943-4526
Israel:
- Barack ITC: 013800-4943-4526
- Bezeq: 014800-4943-4526
- Golden Lines: 012800-4943-4526
Italy: 800-4943-4526
Netherlands: 800-4943-4526
Norway: 800-4943-4526
Saudi Arabia: 800-844-5708
Spain: 800-4943-4526
Sweden: 800-4943-4526
Switzerland: 800-4943-4526
Turkey: 0811-288-0001 and then dial 888-517-7267
UAE: 800-0441-6077
United Kingdom: 00800-4943-4526
Other International: 1-408-754-1200
eMEA_support@arubanetworks.com

APAC

Australia:
- Reach: 11-800-4943-4526
- 1300-4-ARUBA (1300-4-27822)
China:
- China Netcom Group: 00800-4943-4526
- China Telecom South: 00800-4943-4526
Hong Kong: HKT: 001800-4943-4526
India: 044 667 68150
Japan:
- IDC: 0061-010800-4943-4526 * Any fixed, mobile & payphone
- IDC: 010800-494-34536 * Select fixed phones
- JT: 0041-010800-4943-4526 * Any fixed, mobile & payphone
- JT: 010800-4943-4526 * Select fixed phones
- KDD: 001-010800-4943-4526 * Any fixed, mobile & payphone
- KDD: 010800-4943-4526 * Select fixed phones
Korea:
- DACOM: 002800-4943-4526
- KT: 001800-4943-4526
- ONSE: 008800-4943-4526
Malaysia:
- 800-4943-4526
New Zealand: 800-4943-4526
Singapore: Singapore Telecom: 001800-4943-4526
Taiwan: CHT-I: 00800-4943-4526
Thailand: 800-4943-4526
Other International: 1-408-754-1200
1. **Scope.** This Rider and the attached Attivo Networks, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

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

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

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

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

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

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

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

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

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

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

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTIVO NETWORKS, INC.

ATTIVO NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. License Grant.
Attivo Networks grants to you (“Ordering Activity”) a nonexclusive, non-transferable, perpetual license to use the Software solely as part of the Product with which the Software is delivered and solely for Ordering Activity’s internal business purposes. If Ordering Activity purchases the Product for use by any Ordering Activity Affiliate (defined herein), Ordering Activity will provide each such Ordering Activity Affiliate with a copy of this Agreement and will ensure that each such Ordering Activity Affiliate complies with the terms and conditions of this Agreement. Ordering Activity will be responsible for any breach by any such Ordering Activity Affiliate of this Agreement. For purposes of this Agreement, “Ordering Activity Affiliate” means any entity that controls, or is controlled by, or is under common control with Ordering Activity, and “Control” means ownership, directly or indirectly of 50% or more of the voting interest of Ordering Activity. In addition, “Software” means the Botsink software which also includes a release of the Software or patch thereto which may include any add-on release or an error fix, or contains any improvement or new functionality that is provided to Ordering Activity as part of a separate maintenance and support agreement. Attivo’s IRES software is sold separate from the Botsink software. If you have purchased a license for the IRES software, the term “Software” also includes the IRES software. IRES is licensed on a term basis and the term of your IRES license shall start on the date of your purchase order for such software, which has been accepted by Attivo. All rights not expressly granted to Ordering Activity are reserved by Attivo Networks.

2. Restrictions.
Ordering Activity shall maintain the Software in strict confidence and shall not sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Software or make the functionality of the Software available to any other party through any means, including, without limitation, by uploading the Software to a network or file sharing service or through any hosting, application services provider, service bureau or other type of services. Ordering Activity shall not modify, translate or create derivative works based on the Software, in whole or in part, or permit or authorize a third party to do so. Ordering Activity acknowledges and agrees that portions of the Software, including, without limitation, the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Attivo Networks and its suppliers. Accordingly, Ordering Activity shall not disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition. Ordering Activity shall not disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that Ordering Activity runs (or has run) on the Software. Ordering Activity shall not study the Software for the purposes of developing a product which is similar to or competitive with the Software. Ordering Activity shall not copy the Software except for making a reasonable number of archival or backup copies; provided that Ordering Activity reproduces on such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software as delivered to Ordering Activity.

3. Ownership.
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Ordering Activity acknowledges that the Software consists of “commercial computer software” and “commercial computer software documentation” as such terms are defined in the Code of Federal Regulations. Use, duplication, reproduction, release, modification, disclosure or transfer of the Software is restricted in accordance with the terms of this Agreement.

5. Reserved.

Attivo Networks warrants that the (a) Product hardware will be free from defects in material and workmanship for three (3) months from the date of shipment; and (b) the Software will perform substantially in accordance with Attivo Networks’ standard specifications for three (3) months from the date of shipment. As Ordering Activity’s sole and exclusive remedy and Attivo Networks’ and its suppliers’ sole and exclusive liability for any breach of this warranty, Attivo Networks shall, at its option and expense, repair or replace the Product or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are replaced become the property of Attivo Networks. Attivo Networks shall not be responsible for Ordering Activity’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Attivo Networks for repair, whether under warranty or not.

7. Exclusions.
Attivo Networks will not have any obligation to the extent any failure of a Product to comply with the limited warranty set forth under “Limited Warranty” above results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Attivo Networks-authorized personnel; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Attivo Networks’ specifications; (iv) improper installation or site preparation or any failure by Ordering Activity to comply with environmental and storage requirements for the Product specified by Attivo Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage. Attivo Networks and its suppliers do not warrant that the operation of the Product will be uninterrupted or error free.

8. Disclaimer.
EXCEPT FOR THE WARRANTIES EXPRESSLY STATED UNDER “LIMITED WARRANTY” ABOVE, ATTIVO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.
9. Reserved.

10. Reserved.

11. Export Control.
Ordering Activity agrees to comply fully with the U.S. Export Administration Regulations, and any other export laws, restrictions, and regulations to ensure that the Product (hardware, software, any technical data related thereto, and any direct product thereof) is not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations.

12. Reserved.

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0. Definitions
"This License" refers to version 3 of the GNU General Public License.
"Copyright" also means copyright-like laws that apply to other kinds of works, such as semiconductor masks.
"The Program" refers to any copyrightable work licensed under this License. Each licensee is addressed as "you". "Licensees" and "recipients" may be individuals or organizations.
To "modify" a work means to copy from or adapt all or part of the work in a fashion requiring copyright permission, other than the making of an exact copy. The resulting work is called a "modified version" of the earlier work or a work "based on" the earlier work.
A "covered work" means either the unmodified Program or a work based on the Program.
To "propagate" a work means to do anything with it that, without permission, would make you directly or secondarily liable for infringement under applicable copyright law, except executing it on a computer or modifying a private copy. Propagation includes copying, distribution (with or without modification), making available to the public, and in some countries other activities as well.
To "convey" a work means any kind of propagation that enables other parties to make or receive copies. Mere interaction with a user through a computer network, with no transfer of a copy, is not conveying.
An interactive user interface displays "Appropriate Legal Notices" to the extent that it includes a convenient and prominently visible feature that (1) displays an appropriate copyright notice, and (2) tells the user that there is no warranty for the work (except to the extent that warranties are provided), that licensees may convey the work under this License, and how to view a copy of this License. If the interface presents a list of user commands or options, such as a menu, a prominent item in the list meets this criterion.

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The "source code" for a work means the preferred form of the work for making modifications to it. "Object code" means any non-source form of a work.
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1. **Scope.** This Rider and the attached Authentic8 (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”).

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

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

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-2(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(i) and (m) and the Contract Disputes Act, subject to the following exceptions:

   EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

   e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

   f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays/FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

   g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

   h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

   i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

   j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ’s jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

   k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

   l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

   m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

o) **Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

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

s) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Legalese can be tedious and heavy. Authentic8 wants to deliver a valuable service, but there are some basic ground rules, which are described below. You need to read the complete document, but basically:

- When you register to use Authentic8, we store the information you give us, including any website credentials that you chose to store with us.
- Should you store your credentials with us, Authentic8 will help you log in to your web-based accounts. Our servers do this automatically, and we will never access your credentials unless you tell us to.
- We can’t always anticipate problems with other websites or web services, and so we can’t be responsible for your relationship with those third parties.
- Please don’t attempt to decompile or otherwise reverse engineer our software.
- Likewise, we take a rather dim view of someone trying to hack or spoof Authentic8 so please don’t try to attack our service.
- Please don’t do anything illegal using Authentic8. We reserve the right to report illegal activities to the appropriate law enforcement or civil authorities.
- If you’re an administrator, you agree that all your users will be bound by these terms.
- We believe in rapid iteration, and so we’re always updating Authentic8, including the App software you install on your computer. We do this to give you access to new features, as well as to constantly improve security. When we make changes, we’ll do our best to inform you.

That is essentially it. The full legal text is below—and you should review it—but we wanted to give you some plain language up front. Thanks for reading.

Authentic8, Inc. (“Authentic8,” “we” or “our”) provides an internet security service through our website, accessible at www.authentic8.com and our Authentic8 App software (together the “Authentic8 Service”). Please read carefully the following terms and conditions (“Terms”) and our Privacy Policy, which may be found at http://www.authentic8.com/privacy/. These Terms govern your access to and use of the Authentic8 Service and constitute a binding legal agreement between the Ordering Activity and Authentic8. If you accept these Terms or use the Authentic8 Service on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, “you” and “your” will refer and apply to that company or other legal entity. If you have been granted access to and use of the Authentic8 Service by and on behalf of the primary account holder, whether directly or through an administrator, you also agree to abide by these Terms.

YOU ACKNOWLEDGE AND AGREE THAT, BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE AUTHENTIC8 SERVICE.

Acknowledgment and Disclaimer

You acknowledge that the Authentic8 Service may not be in final form or fully functional and may not operate properly or contain errors. You assume all risk arising from use of the Authentic8 Service including, without limitation, the risk of damage to your computer system or the corruption or loss of content or information.

Authentic8 warrants that the Services will be performed substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8’s control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. Authentic8 Services warrants that the services will, for a period of sixty (60) days from the date of your receipt, will be performed in accordance with the terms and conditions of the GSA Schedule Contract. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, The Authentic8 Service is provided “AS IS,” without warranty of any kind. Authentic8 makes no representations or warranties regarding the suitability of the Authentic8 Service for your intended requirements or purposes or regarding any data or information that you download or access through the use of the Authentic8 Service.

Feedback

You agree that all feedback and comments and suggestions for improvements to the Authentic8 Service (collectively, “Feedback”) provided to Authentic8 will be the sole and exclusive property of Authentic8 and you hereby assign to Authentic8 and agree to assign to Authentic8 all of your right, title, and interest in and to all Feedback, including all intellectual property rights therein. At Authentic8’s request and expense, you will execute documents and take
such further acts as Authentic8 may reasonably request to assist Authentic8 to acquire, perfect and maintain its intellectual property rights and other legal protections for the Feedback.

Eligibility

The Authentic8 Service is intended solely for persons who are 18 or older. Any access to or use of the Authentic8 Service by anyone under 18 is expressly prohibited. By accessing or using the Authentic8 Service you represent and warrant that you are 18 or older.

Registration

Past a trial period designated by Authentic8, you may only use the Authentic8 Service if you have a current, valid subscription. In order to use the Authentic8 Service, you must register to create an Authentic8 user account. During the registration process, you will be required to provide certain information and you will establish a username and a password. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. You are responsible for safeguarding your login credentials. You agree not to disclose your login credentials to any third party and to take sole responsibility for any activities or actions under your user account, whether or not you have authorized such activities or actions, including actions taken by users to whom you have granted access and use of the Authentic8 Service on your behalf, directly or through your account administrators. You will immediately notify Authentic8 of any unauthorized use of your user account.

Third Party Websites – Account Information

As a registered user of the Authentic8 Service, you may have the option of providing Authentic8 with login information and credentials, including but not limited to usernames and passwords, and other account information for your personal accounts with certain third party websites, in order to allow Authentic8 to use, store and submit your credentials on your behalf to access your accounts with such third party websites. By providing Authentic8 with such credentials, you understand and agree that Authentic8 will use, store and submit your credentials on your behalf, in order to provide the Authentic8 Service in accordance with your user account settings. You have the ability to disable the storage and submission of your credentials for your account with any third party website at any time by adjusting your Authentic8 user account settings. PLEASE NOTE THAT YOUR RELATIONSHIP WITH EACH THIRD PARTY WEBSITE IS GOVERNED BY THE AGREEMENT YOU HAVE WITH SUCH THIRD PARTY WEBSITE. ANY RISK OF LOSS RELATING TO THE USE OF SUCH THIRD PARTY WEBSITES REMAINS ENTIRELY WITH YOU. You acknowledge and agree that Authentic8 is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

Authentic8 cannot always anticipate technical or other problems with third party websites which may result in service interruptions, a loss of your personalization settings or an inability to submit your credentials on your behalf. Authentic8 cannot assume responsibility for the deletion, non-delivery or failure to store or submit on your behalf any of your credentials, or loss of other information or settings on such third party websites.

Rights You Grant to Authentic8

By submitting your credentials for third party websites to Authentic8, you hereby authorize Authentic8 to use, store and submit such credentials on your behalf, log into such third party websites on your behalf and to configure the Authentic8 Service so that it is compatible with such third party websites. Authentic8 may use, store and submit such credentials on your behalf, but only to the extent necessary to provide the Authentic8 Service to you. You represent and warrant that you are entitled to submit such credentials to Authentic8 for this purpose, without any obligation by Authentic8 to pay any fees or other limitations.

YOU ACKNOWLEDGE AND AGREE THAT WHEN AUTHENTIC8 ACCESSES THIRD PARTY WEBSITES, AUTHENTIC8 IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF, OR ON BEHALF OF, ANY THIRD PARTY. You understand and agree that the Authentic8 Service is not sponsored or endorsed by any third party websites which are accessible through the Authentic8 Service.

Software

We reserve the right to add additional features or functions to the Authentic8 Service, including the Authentic8 App. When installed on your computer, the Authentic8 App communicates with our servers. We may require the updating of the Authentic8 App when we release a new version, or when we make new features available. This update may occur automatically or upon prior notice to you and may occur all at once or over multiple sessions. You acknowledge and agree that we have no obligation to make available to you any subsequent versions of the Authentic8 App.

Conditioned upon your compliance with the terms and conditions of these Terms and during the trial period and term of your subscription to use the Authentic8 Service only, Authentic8 grants you a non-exclusive and non-transferable license for a single user to use the executable form of the Authentic8 App on a computer owned or controlled by you, solely for your personal, non-commercial purposes, as described herein. Authentic8 reserves all rights not expressly granted to you in this Agreement. The license to the Authentic8 App granted under these Terms remains in effect unless earlier terminated in accordance with these Terms. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Restrictions

Except as expressly specified in these Terms, you agree not to modify the Authentic8 App, including but not limited to adding new features or otherwise making adaptations that alter its functionality. You agree to not use or allow others to use the Authentic8 application except in conjunction with an authorized subscription from Authentic8. You acknowledge and agree that portions of the Authentic8 Service, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Authentic8 and its licensors. Accordingly,
you agree not to disassemble, decompile or reverse engineer the Authentic8 Service, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

Payment Terms

Authentic8 offers new users a free trial to use the Authentic8 Service, which begins on the first day you register to use the Authentic8 Service (the "Trial"). Authentic8 may offer various account levels and subscription terms. A description of the features associated with these account levels, subscription terms and fees are available by contacting sales@authentic8.com. You agree to pay the applicable subscription fees that may accrue in relation to your use of the Authentic8 Service, if any, and you expressly agree that we are authorized to charge your Method of Payment for such amounts. Subscription fees will be payable in advance in accordance with the subscription term and billing cycle designated at enrollment, or subsequently established through your account page or otherwise in writing with Authentic8. Unless you cancel your Account prior to the end of the then current subscription term, your subscription term will automatically renew. For accounts set up on an invoice basis, unless an alternate billing cycle is established, you agree to pay all amounts stated in such invoices within thirty (30) days of receipt of the invoice. For corporate accounts, you will be charged additional fees as additional users are added to your account after the 30 day Trial for each user. All fees are non-refundable and non-transferable except as expressly provided in these Terms. All fees and applicable taxes, if any, are payable in United States dollars. Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Authentic8 shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Privacy

See Authentic8's Privacy Policy at http://www.authentic8.com/privacy/ for information and notices concerning Authentic8’s collection and use of your personal information.

Ownership

The Authentic8 Service is protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms, Authentic8 and its licensors exclusively own all right, title and interest in and to the Authentic8 Service, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Authentic8 Service.

User Content

Users may have the ability to post, upload, publish, submit or transmit text, graphics, images, information or other materials to be made available through the Service ("User Content"). By making available any User Content through the Service, you hereby grant to Authentic8 a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Content only on, through or by means of the Service. Authentic8 does not claim any ownership rights in any such User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such User Content.

You acknowledge and agree that you are solely responsible for all User Content that you make available through the Service. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all User Content that you make available through the Service or you have all rights, licenses, consents and releases that are necessary to grant to Authentic8 the rights in such User Content, as contemplated under these Terms; and (ii) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or Authentic8’s use of the User Content (or any portion thereof) on, through or by means of the Service will infringe, misappropriate or violate a third party’s patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

General Prohibitions

You agree not to do any of the following:

- Post, upload, publish, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party’s patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any other person; or (vii) promotes illegal or harmful activities or substances.

- Use, display, mirror or frame the Authentic8 Service, or any individual element within, Authentic8’s name, any Authentic8 trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Authentic8’s express written consent;

- Access, tamper with, or use non-user areas of the Authentic8 Service, Authentic8’s computer systems, or the technical delivery systems of Authentic8’s providers;

- Attempt to probe, scan, or test the vulnerability of any Authentic8 system or network or breach any security or authentication measures;
• Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Authentic8 or any of Authentic8's providers or any other third party (including another user) to protect the Authentic8 Service;

• Attempt to access or search the Authentic8 Service or download information or data from the Authentic8 Service through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Authentic8 or other generally available third party web browsers;

• Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

• Use any meta tags or other hidden text or metadata utilizing a Authentic8 trademark, logo URL or product name without Authentic8’s express written consent;

• Use the Authentic8 Service for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms;

• Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Authentic8 Service to send altered, deceptive or false source-identifying information;

• Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Authentic8 Service;

• Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Authentic8 Service;

• Collect or store any personally identifiable information from Authentic8 Service from other users of the Authentic8 Service without their express permission;

• Impersonate or misrepresent your affiliation with any person or entity;

• Violate any applicable law or regulation; or

• Encourage or enable any other individual to do any of the foregoing.

Authentic8 will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Authentic8 may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that Authentic8 has no obligation to monitor your access to or use of the Authentic8 Service or to review or edit any User Content, but has the right to do so for the purpose of operating the Authentic8 Service, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body.

Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Copyright Policy

Authentic8 respects copyright law and expects its users to do the same. Please see Authentic8’s Copyright Policy at www.authentic8.com/copyright for further information.

Proprietary Rights Notices

All trademarks, service marks, logos, trade names and any other proprietary designations of Authentic8 used herein are trademarks or registered trademarks of Authentic8. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the Federal laws of the United States without regard to its conflict of laws provisions.

Entire Agreement

These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitute the entire and exclusive understanding and agreement between Authentic8 and you regarding the Authentic8 Service, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Authentic8 and you regarding the Authentic8 Service.

Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Authentic8’s prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given:
(i) by Authentic8 via email (in each case to the address that you provide) or (ii) by posting to your user account page. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

General

The failure of Authentic8 to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Authentic8. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

Contacting Authentic8

If you have any questions about these Terms, please contact Authentic8 at support@authentic8.com.
SUBSCRIPTION SERVICES AGREEMENT
This Agreement (this “Agreement”) is entered into between Authentic8, Inc. (“Authentic8”) and the company identified below (“Ordering Activity”) and is effective as of the date signed by Authentic8 below (the “Effective Date”).

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ORDER FORM

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| Subscription Fees: | • $__ per Authorized User per year  
• Subscription Fees represent direct fulfillment from Authentic8 to Ordering Activity, and are net of any Reseller or other fulfillment partner fees. |
| Authorized Users: | Enter contracted number |
| Additional Users: | $__ per additional Authorized User per year |
| Annualized Contract Value: | |
| Access Terms: | Describe any conditions or restrictions around accessing Silo, the need for login credentials (if any), account sharing, number of devices etc. |
| Additional Terms: | Enter or say none. |
| Support Terms: | • Ordering Activity will provide direct first tier support to Authorized Users  
• Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm (Pacific Time), Monday-Friday (excluding national holidays).  
• Authentic8 Service availability will be governed by Exhibit A, Support Terms and Service Availability |

This Agreement is subject to the attached terms and conditions, which is a part of this Agreement. By executing this Agreement, Ordering Activity agrees to be bound by those terms and conditions for the use of the Authentic8 Service. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

ORDERING ACTIVITY

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AUTHENTIC8

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TERMS AND CONDITIONS

The following terms and conditions govern the access and use of the cloud-based security service provided by Authentic8 (the “Authentic8 Service”) during the subscription term and any renewal term (the “Subscription Term”), as described in the attached order form to this Agreement (the “Order Form”).

1. AUTHORIZED USERS

1.1 Ordering Activity will determine the access controls for its employees and agents who are authorized to use the Authentic8 Service (“Authorized Users”) in connection with Ordering Activity’s account. The Authentic8 Service may only be accessed and used by Authorized Users from compatible devices and may require login credentials, the use of which will be governed by the access terms in the associated Order Form. Ordering Activity is responsible for the activity occurring under its account by its Authorized Users (and their compliance with this Agreement).

1.2 Ordering Activity may from time to time replace an Authorized User who has terminated or changed their job status or function, or otherwise no longer requires use of the Authentic8 Service. Ordering Activity may add Authorized Users to its account at any time during the Subscription Term. Ordering Activity may only decrease the number of Authorized Users at the end of the Subscription Term (prior to the renewal). Authentic8 shall invoice Ordering Activity for any Authorized Users added during the Subscription Term in excess of the contracted number according to the terms set forth in the applicable Purchase Order.

2. AUTHENTIC8 SERVICE

2.1 Subject to the terms and conditions of this Agreement, Ordering Activity may access and use the Authentic8 Service for its business purposes during the Subscription Term and in accordance with the terms and limitations set forth in the Order Form.

2.2 In order to use the Authentic8 Service, each Authorized User must download the Authentic8 client software application (the “Authentic8 App”) from the Authentic8 website or the applicable app store and install it on each device that will use the Authentic8 Service. Ordering Activity agrees to stay current with latest version of the Authentic8 App, and acknowledges that Authentic8 reserves the right to deprecate older versions of the Authentic8 App subject to notification. Ordering Activity will only allow the installation the Authentic8 App on compatible devices that are supported by Authentic8. Ordering Activity and its Authorized Users may not modify, alter, decompile or reverse engineer the Authentic8 App.

3. USE OF THE AUTHENTIC8 SERVICE

3.1 Ordering Activity, and/or its Authorized Users may provide Authentic8 with certain login and other account information for websites and web-based applications that Authorized Users will access through the Authentic8 Service (“Account Access Information”). Authorized Users may only use the Authentic8 Service to access accounts for which they are authorized by Ordering Activity to access and use. By providing Account Access Information, the account owner (whether Ordering Activity or its Authorized Users) permits Authentic8 to use (and, if elected, store) the Account Access Information on behalf of the account owner. The account owner can remove any Account Access Information stored with the Authentic8 Service at any time. In no event shall Account Access Information associated with Authorized Users personal websites be accessible or made available to Ordering Activity. Authentic8 will maintain administrative and technical safeguards to protect the security and confidentiality of the Account Access Information stored in the Authentic8 Service in accordance with applicable industry standards; however, Ordering Activity, and its Authorized Users are ultimately responsible for taking appropriate steps to maintain the security and confidentiality of its Account Access Information.

3.2 Ordering Activity, and its Authorized Users, agree not to: (1) use the Authentic8 Service or other than as authorized in this Agreement; (2) resell, sublicense, or otherwise make the Authentic8 Service available to any third party; (3) use the Authentic8 Service to support any activity that is illegal or that violates the proprietary rights of others; (4) interfere with or disrupt the integrity or performance of the Authentic8 Service or any websites or web-based applications; (5) deactivate, impair, or circumvent any security or authentication measures of the Authentic8 Service or any websites or web-based applications; (6) access the Authentic8 Service for purposes of monitoring its performance or functionality; or (7) authorize any third parties to do the above.

3.3 Authentic8 is not responsible or liable for: (1) the availability, accuracy, or security of any websites or web-based applications accessed through the Authentic8 Service; (2) the content, products, or services on or available from those websites or web-based applications; or (3) the deletion, non-delivery or failure to store or submit Account Access Information, or a loss of other information or settings on the websites and web-based applications accessed through the Authentic8 Service.

4. SUPPORT AND AVAILABILITY

4.1 During the Subscription Term, Authentic8 will provide technical support for the Authentic8 Service according to the terms set forth in Exhibit A (“Support Terms and Service Availability”). Authentic8 will make the Authentic8 Service available in accordance with Exhibit A and will use reasonable efforts to maintain the Authentic8 Service in a manner that minimizes errors and service interruptions.

5. SUBSCRIPTION FEES

5.1 Authentic8 shall invoice Ordering Activity for the fees or charges for the Authentic8 Service as specified in the Order Form (“Subscription Fees”). All Subscription Fees are quoted in United States dollars. Subscription Fees for the contracted number of Authorized Users will be invoiced and are due within 30 days from the date of invoice, or as otherwise stated in the GSA Schedule Contract or Purchase Order(s). Incremental service fees incurred by adding Authorized Users during the Subscription Term will be invoiced according to the terms set forth in the GSA Schedule Contract and the Purchase Order. All payment obligations are non-cancelable and once paid are nonrefundable.

5.2 Authentic8 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.3 Authentic8 reserves the right to modify the Subscription Fees or introduce new fees at its discretion by providing 30 days prior notice to Ordering Activity. Notwithstanding the foregoing, any changes to the Subscription Fees will not apply to Ordering Activity’s current Subscription Term, and will instead take effect at the beginning of the renewal term.

5.4 AUTHENTIC8 SERVICE

6. RESERVED

7. TERMINATION

7.1 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with
performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.2 Upon any expiration or termination of this Agreement, Ordering Activity’s right to access and use the Authentic8 Service will automatically terminate, and Ordering Activity may not continue to access or use the Authentic8 Service. Authentic8 will have no liability for any costs, losses, damages, or liabilities arising out of or related to Authentic8’s exercise of its termination rights under this Agreement. Any payment obligations as of the expiration or termination (or that relate to activity during the Subscription Term) will remain in effect. The obligations and provisions of Sections 8 through 12 will survive any expiration or termination of the Agreement.

8. PROPRIETARY RIGHTS

8.1 Authentic8 owns all right, title and interest in and to the Authentic8 Service and the Authentic8 App, including all worldwide intellectual property rights therein (“Authentic8 IP”). This Agreement does not convey any proprietary interest in or to any Authentic8 IP or rights of entitlement to the use thereof except as expressly set forth herein. Ordering Activity grants Authentic8 the right to use its name (and the corresponding trademark or logo) on Authentic8’s website and marketing materials to identify Ordering Activity as a Ordering Activity; provided, however, that any such use must be pre-approved by Ordering Activity, which will not be unreasonably withheld or delayed. 8.2 Authentic8 will be free to use any suggestions, ideas, feedback, or recommendations provided by Customer regarding the Authentic8 Service or the Authentic8 App (“Feedback”), and by providing any Feedback, Customer grants Authentic8 a worldwide, perpetual, irrevocable, fully-paid and royalty-free license to use and exploit that Feedback for any purpose and without any further obligation. Authentic8 acknowledges that the ability to use this Agreement and any Feedback received in advertising is limited by GSAR 552.203-71.

8.3 Each party understands that the other party may need to disclose certain non-public information relating to the disclosing party’s business that is marked or identified as “confidential” at the time of disclosure (“Confidential Information”) in connection with the use and/or performance of the Authentic8 Service. The receiving party agrees to take reasonable precautions to protect such Confidential Information, and to not disclose (without the disclosing party’s prior authorization) to any third person such Confidential Information. Confidential Information does not include any information that the receiving party can show: (1) is or becomes generally available to the public; or (2) was in its possession or was known prior to receipt from the disclosing party; or (3) was rightfully disclosed to it without restriction by a third party; or (4) was independently developed without use of any Confidential Information of the disclosing party. The receiving party may disclose Confidential Information if the disclosure is necessary to comply with a valid court order or subpoena (in which case the receiving party will, unless expressly prohibited by the terms of the court order or subpoena, promptly notify the disclosing party and cooperate with the disclosing party if the disclosing party chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed, or to limit the nature or scope of the information to be disclosed). Authentic8 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

9. DISCLAIMERS

9.1 Authentic8 warrants that the Services will be perform substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8’s control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING The Authentic8 Service and the Authentic8 App are provided “AS IS” and on an “AS AVAILABLE” basis. Authentic8 does not warrant that the Authentic8 Service will be provided without interruption or be completely error free. AUTHENTIC8 DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

9.2 Ordering Activity acknowledges that, despite the security features of the Authentic8 Service, no service can provide a complete and error-free security. Authentic8 does not warrant that the Authentic8 Service will be completely error-free or that it will provide protection from security breaches. Authentic8 is not responsible for security breaches caused by circumstances outside its reasonable control. Authentic8 is not responsible for any data or information that Ordering Activity, or its Authorized Users, download or access through the use of the Authentic8 Service. Ordering Activity assumes all risk from the use of the Authentic8 Service including any damage to its computer system or devices or the corruption or loss of its data and information when accessing or using the Authentic8 Service.

10. RESERVED

11. INDEMNIFICATION

11.1 Authentic8 will: (1) defend Ordering Activity against any third party suit, claim, action or demand (a “Claim”) alleging that the Authentic8 Service infringes any copyright or trademark or misappropriates a trade secret of a third party; and (2) indemnify and hold Ordering Activity harmless from any final award of damages or settlement amount arising in connection with any such Claim.

11.2 The indemnity obligations are conditioned on Ordering Activity notifying Authentic8 promptly in writing of any actual or threatened Claim. Ordering Activity giving Authentic8 control of the defense thereof and any related settlement negotiations, and Ordering Activity cooperating and, at Authentic8’s request and expense, assisting in such defense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

12. GENERAL

12.1 The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement. This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

12.2 This Agreement is governed by and construed in accordance with the Federal laws of the United States, without giving effect to the principles of conflict of law. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

12.3 Neither party may assign this Agreement, in whole or in part, without the other party’s prior written consent. Any attempt to assign this Agreement other than as permitted above will be null and void.

12.4 All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

12.5 This Agreement, together with the Underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitutes the complete and exclusive understanding and agreement between the parties regarding this subject matter and supersedes all prior or contemporaneous agreements or
understandings, written or oral, relating to this subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

[END]

EXHIBIT A:

SUPPORT TERMS AND SERVICE AVAILABILITY

Capitalized terms not defined below will have the meaning ascribed to them in the Agreement. Additional terms used herein are defined below.

1. SUPPORT AND MAINTENANCE

1.1 Technical Support. Ordering Activity will provide direct first tier technical support directly to its Authorized Users. Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm, Pacific Time, Monday-Friday (excluding national holidays).

1.2 Maintenance. Authentic8 will make updates (error corrections, bug fixes, enhancements and/or improvements) to the Authentic8 Service on an ongoing basis. Except in the case of emergencies, Authentic8 will schedule maintenance during appropriate, non-peak usage hours (typically between 10pm on Fridays and 12pm on Sundays, Pacific Time) and to the extent possible will provide advance notice of any planned service disruption.

1.3 Reporting Process. Only Ordering Activity's Account administrator(s) may contact Authentic8's technical support personnel. In connection with submitting a problem report, Ordering Activity must: (i) notify Authentic8 promptly of problems with the Authentic8 Service, and provide Authentic8 with any documentation available regarding the error sufficient to allow Authentic8 to reproduce the error; and (ii) provide Authentic8 with reasonable assistance, as requested, to troubleshoot the problem.

2. SERVICE LEVEL

2.1 Availability. The Authentic8 Service will be available 99.9% of the time per month, except for any scheduled maintenance or Service Interruptions ("Uptime Availability"). The Authentic8 Service (or a portion of the Authentic8 Service) may be unavailable at certain times, for any unanticipated or unscheduled emergency maintenance or unavailability as a result of (i) circumstances beyond Authentic8’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or (ii) Internet third party service provider failures, delays, or denial of service attacks ("Service Interruptions").

2.2 Remedies. If the Authentic8 Service does not meet the Uptime Availability in any given calendar month (excluding any scheduled maintenance or Service Interruptions), then Authentic8 will credit Ordering Activity a percentage of the Subscription Fees for that month as follows:

<table>
<thead>
<tr>
<th>Service Availability</th>
<th>Service Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>99.5% - 99.9%</td>
<td>20%</td>
</tr>
<tr>
<td>99% - 99.5%</td>
<td>40%</td>
</tr>
<tr>
<td>&lt;99%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Service credits must be requested in writing within 10 business days after the month following such service level unavailability. This credit will be applied against future Subscription Fees. If the Authentic8 Service does not meet the Uptime Availability for two (2) consecutive months in any three (3) month period; or four (4) times in any twelve (12) month period, Ordering Activity may terminate the Agreement and Authentic8 will refund the unused portion of the Subscription Fees that Ordering Activity had paid for the Authentic8 Service for the remainder of the Subscription Term. This section states Ordering Activity’s sole and exclusive remedy for the unavailability of the Authentic8 Service.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
BARRACUDA NETWORKS

BARRACUDA NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

Limited Hardware Warranty

1. Contractor warrants that commencing from the date of delivery to Ordering Activity, and continuing for a period of one (1) year: (a) its products (excluding any software) will be free from material defects in materials and workmanship under normal use; and (b) the software provided in connection with its products, including any software contained or embedded in such products will substantially conform to Contractor published specifications in effect as of the date of manufacture. Except for the foregoing, the software is provided as is. In no event does Contractor warrant that the software is error free or that Ordering Activity will be able to operate the software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack. The limited warranty extends only to Ordering Activity the original buyer of the Barracuda Networks product and is non-transferable.

2. Remedy. Ordering Activity’s remedy and the liability of Contractor under this limited warranty shall be, at Contractor’s or its service centers option and expense, the repair, replacement or refund of the purchase price of any products sold which do not comply with this warranty. Hardware replaced under the terms of this limited warranty may be refurbished or new equipment substituted at Contractor’s option. Contractor obligations hereunder are conditioned upon the return of affected articles in accordance with Contractor then-current Return Material Authorization (“RMA”) procedures. All parts will be new or refurbished, at Contractor’s discretion, and shall be furnished on an exchange basis. All parts removed for replacement will become the property of Contractor. In connection with warranty services hereunder, Contractor may at its discretion modify the hardware of the product at no cost to Ordering Activity to improve its reliability or performance. The warranty period is not extended if Contractor repairs or replaces a warranted product or any parts. Contractor may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.

3. Exclusions and Restrictions. This limited warranty does not apply to Barracuda Networks products that are or have been (a) marked or identified as "sample" or "beta," (b) loaned or provided to Ordering Activity at no cost, (c) sold "as is," (d) repaired, altered or modified except by Contractor, (e) not installed, operated or maintained in accordance with instructions supplied by Contractor, or (f) subject to abnormal physical or electrical stress, misuse, negligence or to an accident.

EXCEPT FOR THE ABOVE WARRANTY, CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO BARRACUDA NETWORKS PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. EXCEPT FOR THE ABOVE WARRANTY, BARRACUDA NETWORKS PRODUCTS AND THE SOFTWARE ARE PROVIDED "AS-IS" AND CONTRACTOR DOES NOT WARRANT THAT ITS PRODUCTS WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE OR ERROR FREE, OR THAT ANY ERRORS IN ITS PRODUCTS OR THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, CONTRACTOR DOES NOT WARRANT THAT BARRACUDA NETWORKS PRODUCTS, THE SOFTWARE OR ANY EQUIPMENT, SYSTEM OR NETWORK ON WHICH BARRACUDA NETWORKS PRODUCTS WILL BE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

Barracuda Networks Software License Terms

1. The software and documentation, whether on disk, in flash memory, in read only memory, or on any other media or in any other form (collectively "Barracuda Software") is licensed, not sold, to Ordering Activity by Contractor for use only under the terms of this Attachment A, and Contractor reserves all rights not expressly granted to Ordering Activity. The rights granted are limited to Contractor's intellectual property rights in the Barracuda Software and do not include any other patent or intellectual property rights. Ordering Activity owns the media on which the Software is recorded but Contractor retains ownership of the Software itself. If Ordering Activity has not completed a purchase of the Software and made payment for the purchase, the software may only be used for evaluation purposes and may not be used in any production capacity. Furthermore the Software, when used for evaluation, may not be secure and may use publicly available passwords.

2. Permitted License Uses and Restrictions. If Ordering Activity has purchased a Barracuda Networks hardware product, this Attachment A allows Ordering Activity to use the Software only on the single Barracuda labeled hardware device on which the software was delivered. Ordering Activity may not make copies of the Software. Ordering Activity may not make a backup copy of the Software. If Ordering Activity has purchased a Barracuda Networks Virtual Machine Ordering Activity may use the software only in the licensed number of instances of the licensed sizes and Ordering Activity may not exceed the licensed capacities. Ordering Activity may make a reasonable number of backup copies of the Software. If Ordering Activity have purchased client software Ordering Activity may install the software only on the number of licensed clients. Ordering Activity may make a reasonable number of back copies of the Software. For all purchases Ordering Activity’s use of the Software shall also be limited by any other restrictions set forth in Ordering Activity’s purchase order or in Contractor’s GSA product catalog, user documentation, or web site, to a maximum number of (a) seats (i.e. users with access to install Software), (b) concurrent users, sessions, ports, and/or issued and outstanding IP addresses, and/or (c) central processing unit cycles or instructions per second. Ordering Activity’s use of the Software shall also be limited by any other restrictions set forth in Ordering Activity’s purchase order or in Contractor’s GSA product catalog, user documentation or Web site for the Software. The BARRACUDA SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, LIFE SUPPORT MACHINES, OR OTHER EQUIPMENT IN WHICH FAILURE COULD LEAD
TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY EXPRESSLY AGREES NOT TO USE IT IN ANY OF THESE OPERATIONS.

3. Ordering Activity may not transfer, rent, lease, lend, or sublicense the Software or allow a third party to do so. ORDERING ACTIVITY MAY NOT OTHERWISE TRANSFER THE SOFTWARE OR ANY OF ORDERING ACTIVITY'S RIGHTS AND OBLIGATIONS UNDER THIS ATTACHMENT A. Ordering Activity agree that Ordering Activity will have no right and will not, nor will it assist others to: (i) make unauthorized copies of all or any portion of the Software; (ii) sell, sublicense, distribute, rent or lease the Software; (iii) use the Software on a service bureau, time sharing basis or other remote access system whereby third parties other than Ordering Activity can use or benefit from the use of the Software; (iv) disassemble, reverse engineer, modify, translate, alter, decompile or otherwise attempt to discern the source code of all or any portion of the Software; (v) utilize or run the Software on more computers than Ordering Activity has purchased license to; (vi) operate the Software in a fashion that exceeds the capacity or capabilities that were purchased by Ordering Activity.

4. ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF THE BARRACUDA SOFTWARE IS AT ORDERING ACTIVITY’S OWN RISK AND THAT THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, AND ACCURACY IS WITH ORDERING ACTIVITY. THE BARRACUDA SOFTWARE IS PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE BARRACUDA SOFTWARE, EITHER EXPRESSED OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR ANY APPLICATION, OF ACCURACY, AND OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONTRACTOR DOES NOT WARRANT THE CONTINUED OPERATION OF THE SOFTWARE, THAT THE PERFORMANCE WILL MEET ORDERING ACTIVITY'S EXPECTATIONS, THAT THE FUNCTIONS WILL MEET ORDERING ACTIVITY'S REQUIREMENTS, THAT THE OPERATION WILL BE ERROR FREE OR CONTINUOUS, THAT CURRENT OR FUTURE VERSIONS OF ANY OPERATING SYSTEM WILL BE SUPPORTED, OR THAT DEFECTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION GIVEN BY CONTRACTOR OR AUTHORIZED CONTRACTOR REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE BARRACUDA SOFTWARE PROVE DEFECTIVE, ORDERING ACTIVITY ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. FURTHERMORE CONTRACTOR SHALL ASSUME NO WARRANTY FOR ERRORS/BUGS, FAILURES OR DAMAGE WHICH WERE CAUSED BY IMPROPER OPERATION, USE OF UNSUITABLE RESOURCES, ABNORMAL OPERATING CONDITIONS (IN PARTICULAR DEVIATIONS FROM THE INSTALLATION CONDITIONS) AS WELL AS BY TRANSPORTATION DAMAGE. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack. ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT ORDERING ACTIVITY WILL PROVIDE AN UNLIMITED PERPETUAL ZERO COST LICENSE TO CONTRACTOR FOR ANY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS WHICH ORDERING ACTIVITY EITHER OWN OR CONTROL THAT ARE UTILIZED IN ANY BARRACUDA PRODUCT.

5. Content Restrictions. ORDERING ACTIVITY MAY NOT (AND MAY NOT ALLOW A THIRD PARTY TO) COPY, REPRODUCE, CAPTURE, STORE, RETRANSMIT, DISTRIBUTE, OR BURN TO CD (OR ANY OTHER MEDIUM) ANY COPYRIGHTED CONTENT THAT ORDERING ACTIVITY ACCESS OR RECEIVE THROUGH USE OF THE PRODUCT CONTAINING THE SOFTWARE. ORDERING ACTIVITY ASSUME ALL RISK AND LIABILITY FOR ANY SUCH PROHIBITED USE OF COPYRIGHTED CONTENT. Ordering Activity agrees not to publish any benchmarks, measurements, or reports on the product without Contractor’s written express approval.

6. Trademarks. Certain portions of the product and names used in this Attachment A, the Software and the documentation may constitute trademarks of Barracuda Networks. Ordering Activity is not authorized to use any such trademarks for any purpose.

7. Collection of Data. Ordering Activity agrees to allow Contractor through Barracuda Networks to collect information (“Statistics”) from the Software in order to fight spam, virus, and other threats as well as optimize and monitor the Software. Information will be collected electronically and automatically. Statistics include, but are not limited to, the number of messages processed, the number of messages that are categorized as spam, the number of virus and types, IP addresses of the largest spam senders, the number of emails classified for Bayesian analysis, capacity and usage, websites not categorized, fingerprints of emails, and other statistics. Ordering Activity's data will be kept private and will only be reported in aggregate by Barracuda Networks.

8. Subscriptions. Software updates and subscription information provided by Barracuda Energize Updates or other services may be necessary for the continued operation of the Software. Ordering Activity acknowledge that such a subscription may be necessary. Furthermore some functionality may only be available with additional subscription purchases. Obtaining Software updates on systems where no valid subscription has been purchased or obtaining functionality where subscription has not been purchased is strictly forbidden and in violation of this Attachment A. All initial subscriptions commence at the time of activation and all renewals commence at the expiration of the previous valid subscription. Unless otherwise expressly provided in the documentation, Ordering Activity shall use the Energize Updates Service and other subscriptions solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Barracuda Networks equipment) for communication with Barracuda Networks equipment owned or leased by Ordering Activity. All subscriptions are non-transferrable. Contractor makes no warranty that subscriptions will continue un-interrupted.

9. Time Base License. If Ordering Activity’s Software purchase is a time based license Ordering Activity expressly acknowledge that the Software will stop functioning at the time the license expires.

10. Support. Telephone, email and other forms of support will be provided to Ordering Activity if you have purchased a product that includes support. The hours of support vary based on country and the type of support purchased. Barracuda Networks Energize Updates typically include Basic support.

11. Changes. Contractor through Barracuda Networks reserves the right at any time not to release or to discontinue release of any Software or Subscription and to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Software or Subscriptions.
12. Open Source Licensing. Barracuda Networks products may include programs that are covered by the GNU General Public License (GPL) or other Open Source license agreements, in particular the Linux operating system. It is expressly put on record that the Software does not constitute an edited version or further development of the operating system. These programs are copyrighted by their authors or other parties, and the authors and copyright holders disclaim any warranty for such programs. Other programs are copyright by Contractor. Contractor through Barracuda Networks makes available the source code used to build Barracuda products available at source.barracuda.com. This directory includes all the open source programs that are distributed on the Barracuda products. Obviously not all of these programs are utilized, but since they are distributed on the Barracuda product Contractor through Barracuda is required to make the source code available.

**Barracuda Instant Replacement Service**

Contractor through Barracuda Networks shall provide the instant replacement services described below commencing on the date of delivery of the Barracuda Networks, Inc. product for which the Instant Replacement Service is purchased (Product) to the Ordering Activity, and continuing for a period of one (1) year, three (3) years, or five (5) years depending on the Service purchased (Instant Replacement Service Period). During the Instant Replacement Service Period, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a new Product within twenty-four (24) hours if Ordering Activity resides in the United States. For Ordering Activities residing outside the United States, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a replacement Product via express mail within one business day.

Upon requesting a replacement Product, Ordering Activity must return the original Product to Barracuda Networks. Ordering Activity must return the original Product to Barracuda Networks within 30 days after shipment of the replacement Product. Barracuda Networks will pay shipping costs to ship the replacement Product to Ordering Activity. The Ordering Activity is responsible for shipping costs back to Barracuda Networks of the covered unit.

This Instant Replacement Service Period is not extended if Contractor through Barracuda Networks replaces a Product. Barracuda Networks may change the availability of Instant Replacement Service programs, at its discretion, but any changes will not be retroactive.

This Instant Replacement Service extends only to the original Ordering Activity of the Product and is non-transferable. Instant Replacement must be purchased within 60 days of initial order of the system to be covered.

Ordering Activity's remedy and the liability of Contractor under this Instant Replacement Service and during the Instant Replacement Service Period will be shipment of a replacement Product within the time period and according to the replacement process set forth above and on the Barracuda Networks Web Site or literature accompanying the Product, or a refund of the purchase price if the Product is returned to Contractor through Barracuda Networks.

Restrictions. This Instant Replacement Service does not apply if (a) the Product has been altered, except by Contractor through Barracuda Networks, (b) the Product has not been installed, operated, repaired, or maintained in accordance with instructions, (c) the Product has been subjected to abnormal physical or electrical stress, misuse, or negligence (d) the Product has an altered or missing serial number; or (e) Contractor has not received payment for the Product or (f) the Product is physically damaged or (g) a Ordering Activity must have current EU to take advantage of IR.

Renewal. At the end of the Instant Replacement Service Period, Ordering Activity may have the option to renew the Instant Replacement Service at then-current GSA price, provided such Instant Replacement Service is available. All initial subscriptions commence at the time of sale of the unit and all renewals commence at the expiration of the previous valid subscription.

**DISCLAIMER OF WARRANTY.** EXCEPT AS SPECIFIED IN THIS INSTANT REPLACEMENT SERVICE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO ORDERING ACTIVITY. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

**Barracuda Energize Updates**

Barracuda Energize Updates provide Ordering Activity's Barracuda Networks product with protection from the latest Internet threats. The team at Contractor through Barracuda Central continuously monitors the Internet for new trends in network security threats and develops strategies to mitigate those threats. Energize Updates deliver the latest definitions most appropriate to Ordering Activity's product -- spam, virus, content categories, spyware filter, intrusion prevention, IM protocols, policies, security updates, attacks and document formats. These updates are sent out hourly or more frequently if needed, to ensure that Ordering Activity always have the latest and most comprehensive protection.

Barracuda Energize Updates subscriptions need to be purchased with any Barracuda Networks product to provide complete protection from the latest Internet threats. Subscriptions can be purchased or renewed for hardware appliances for up to 5 years from purchase of product. In addition to definition updates, Energize Updates subscriptions also provide:

- **Basic Support**, which includes email support 24x7 and phone support between the hours of 9 a.m. and 5 p.m. Monday through Friday in the US (Pacific Time). Note that Contractor through Barracuda Networks Technical Support will take and respond to support calls 24x7 from Basic Support customers if we are not helping other customers.

- **Firmware Maintenance** which includes new firmware updates with feature enhancements and bug fixes for up to 4 years from purchase of product.

- **Security Updates to patch or repair any security vulnerabilities for up to 5 years from purchase of product.**

- **Optional participation in the Barracuda Early Release Firmware program.**
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached BlueCat Federal USA, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereeto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S. C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated
June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504, 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BLUECAT FEDERAL USA, INC.

MASTER AGREEMENT

This Master Agreement is entered into by EC America, Inc. ("Contractor") and the Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity"). Contractor and the Ordering Activity placing an order under the GSA Schedule contract that includes this Agreement (any such order being the "Purchase Order") mutually agree to be bound to these terms.

All references to BlueCat in this Agreement should be read as “Contractor acting by and through its supplier, BlueCat.” For avoidance of doubt, nothing herein shall establish privity of contract between BlueCat and the Ordering Activity.

1. DEFINITIONS; PURCHASE ORDERS; SCHEDULES

1.1. Definitions. Capitalized terms not expressly defined in this Agreement have the meaning given to them in Schedule “A”.

1.2. Purchase Orders. All orders of BlueCat Offerings, Professional Services and other ancillary purchases by Customer shall be evidenced by a Purchase Order. The terms of all Purchase Orders, whether issued and accepted before or after the execution of this Agreement, must be consistent with this Agreement, unless specifically stated and agreed to by the Parties. No terms in any form of Customer Purchase Order, other than the identification, price, quantity and license model of the BlueCat Offerings, the Subscription Period, if applicable, the applicable pricing and Active Unique IPs tier, and the address for invoicing and delivery, if applicable, shall be binding on BlueCat, unless specifically stated and agreed to by the Parties. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity’s minimum needs.

1.3. Schedules. The following schedules are attached to and form a part of this Agreement:

Schedule “A” – Definitions
Schedule “B” – Additional E-Learning Terms and Conditions
Schedule “C” – Additional Professional Service Terms and Conditions
Schedule “D” – Additional Managed Services Terms and Conditions
Schedule “E” – Additional Hosted External DNS Service Terms and Conditions

2. BLUECAT SOFTWARE PRODUCTS

2.1. Grant of License. BlueCat grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable license to use the Software components of the Software Products identified on any Purchase Order, subject at all times to the terms and conditions set forth in this Agreement.

2.2. Duration of License. Software Products licensed on a Subscription basis are temporary and expire when the Subscription Period for the relevant Software Product(s) expires or is terminated. For Software licensed on a perpetual basis, such licenses will become perpetual (unless terminated as provided herein or as otherwise set out in a Purchase Order) when all payments for such licenses have been received by BlueCat.

2.3. Support; Duration. BlueCat shall provide the standard Support for the applicable Software Product to the extent specified in a Purchase Order. Support shall be provided as a Subscription during the Subscription Period. Once paid, Support fees are non-refundable.

3. BLUECAT CLOUD SERVICES AND DNS FLEX SERVICES

3.1. Access and Use. Subject to the terms and condition of this Agreement, Customer may remotely access and use (i) the Cloud Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, and (ii) the DNS Flex Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order.

3.2. Service Levels, Sole Remedy. BlueCat will make the Cloud Service and the cloud service portions of the DNS Flex Service, in each case as ordered by Customer, available to Customer in accordance with the applicable Service Level Schedule. BlueCat’s obligations in the Service Level Schedule do not apply to the extent: (a) Customer’s system does not meet the minimum requirements listed in the Documentation to support the applicable BlueCat Offering; (b) reserved; and (c) the Service Availability (as defined in the Service Level Schedule) is impacted by Customer’s failure to incorporate or utilize any recommendations or data produced by the applicable BlueCat Offering (e.g. security recommendations emanating from the applicable BlueCat Offering). The remedies listed in the Service Level Schedule are Customer’s sole remedy and BlueCat’s sole obligation for any failure of the Cloud Service or the cloud service portions of the DNS Flex Service. All other Cloud Services are provided “as is”, per the disclaimer in Section 6.4.

3.3. Security. BlueCat will maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Cloud Services and cloud service portions of the DNS Flex Services, and Customer Data.

3.4. Access Methods, Authorized Users, Unauthorized Access or Use. Customer agrees that it is responsible for protecting the security and integrity of the Access Methods. Customer shall be fully responsible for any Authorized Users’ breach of this Agreement. Customer agrees that it is liable for any acts or omissions occurring under any Access Methods, whether by Authorized Users or otherwise. Each Party shall notify the other Party immediately of any suspected or known unauthorized access or use of the Cloud Services or DNS Flex Services, will use commercially reasonable efforts to prevent such unauthorized access or use, and will use commercially reasonable efforts to stop said unauthorized access or use.
3.5. Customer Data. Customer hereby grants to BlueCat a non-exclusive, worldwide right to use, process and transmit, the Customer Data via the Cloud Services and DNS Flex Services so that BlueCat may provide the applicable ordered Cloud Services and DNS Flex Services to Customer. Customer agrees that BlueCat does not review, edit, substantiate, determine or otherwise have any responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of any Customer Data. **Customer has sole responsibility for, and BlueCat disclaims all liability for, the Customer Data transmitted by Customer to the Cloud Services or DNS Flex Services.**

3.6. Updates and Modifications. Customer acknowledges and agrees that from time to time BlueCat may apply updates to, or otherwise revise, the Cloud Services or DNS Flex Services and that such updates and/or revisions may result in additions, modifications or removal of functionality, features, content or the appearance of the Cloud Services or DNS Flex Services. Any material updates to the Cloud Services or DNS Flex Services that results in the removal of material functionality, considering the overall level of service, shall be considered a material change to this Agreement and shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

3.7. Ancillary Services Software. BlueCat grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable and limited license to use the Ancillary Cloud Service Software during the applicable Subscription Period solely for Customer’s internal business purposes. In addition, BlueCat shall provide Support for the Ancillary Service Software during the applicable Subscription Period. Customer’s right to use such software and receive Support for such software ceases when the right to access and use Cloud Services or DNS Flex Services, as applicable, ends. At such time, each copy of the Ancillary Service Software must be promptly uninstalled or BlueCat may disable the Ancillary Service Software.

3.8. APIs. In the event that BlueCat makes available any APIs to Customer as part of the DNS Flex Services or Cloud Services, then Customer may access such APIs on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified in a Purchase Order, subject at all times to the terms and conditions of this Agreement. Customer is responsible for making and maintaining all necessary arrangements to access, use and interface with such APIs in accordance with such specifications, restrictions and guidelines as BlueCat may stipulate from time to time. In addition, APIs regarding BlueCat Gateway are subject to the requirements detailed at the following address: `https://quay.io/repository/bluecat/gateway` and Customer agrees to comply with such requirements. BlueCat may from time to time on reasonable notice require Customer at Customer’s own cost to take such steps as are required to integrate any modifications or updates BlueCat makes to APIs. BlueCat reserves the right to restrict Customer access the APIs if BlueCat reasonably determine, in BlueCat sole discretion, that the volume of queries originating from Customer use of the APIs is unduly burdening any API.

3.9. Service Points. Customer acknowledges and agrees that, in order to access and use the DNS Flex Services, Customer must use Service Points and that all Customer’s devices must point directly to a Service Point ("first hop").

### 4. ADDITIONAL TERMS & RESTRICTIONS

4.1. License and Subscription Models. The BlueCat Offerings are provided or made available based on the license or subscription model identified in the applicable Purchase Order. Usage of the BlueCat Offerings may not exceed the maximum allowable licenses, subscriptions or Unique Active IPs or any other usage or scope restrictions. Prior to renewal of any BlueCat Offerings and at BlueCat’s discretion, acting reasonably, at any time during the Subscription Period where Customer’s usage thereof has exceeded such restrictions, Customer will be invoiced for any over usage of the applicable product or service at the then-current list price in accordance with the GSA Schedule Pricelist. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

4.2. Active Unique IPs. Usage of the DNS Flex Services may not exceed the maximum number of Unique Active IPs per month specified in the applicable Purchase Order for that pricing tier. Where Customer’s usage of the DNS Flex Services has exceeded such restrictions, then Customer will be invoiced for any such over usage, at BlueCat’s discretion, acting reasonably, at any time during the Subscription Period, at the then-current list price in accordance with the GSA Schedule Pricelist.

4.3. Acceptable Use Policy. Customer agrees to, and agrees to ensure that its Authorized Users will, comply with the Acceptable Use Policy. Neither this Agreement nor the Acceptable Use Policy requires that BlueCat take any action against Customer or any Authorized User or other third party for violating the Acceptable Use Policy or this Agreement, but BlueCat is free to take any such action it sees fit, in addition to any other remedies BlueCat may have.

4.4. Suspension of Perpetual Licenses. If Customer is transitioning from an existing BlueCat perpetual license model to the subscription license model of DNS Flex Services, upon delivery of the DNS Flex Services, all perpetual licenses being replaced are suspended during the Subscription Period. To reinstate such perpetual licenses, please contact BlueCat.

4.5. Appliances. Upon payment of additional fees, BlueCat shall provide the Appliances identified in a Purchase Order.

4.6. E-Learning. If Customer orders the E-Learning Cloud Service pursuant to a Purchase Order, the terms and conditions in Schedule “B” will apply in addition to the terms and conditions of this Agreement.

4.7. Professional Services. Upon payment of additional fees, BlueCat shall provide the Professional Services described in the SOW upon the terms and conditions set forth in this Agreement and in Schedule “C”.

4.8. Managed Services. If Customer is a managed provider of DNS services, then the terms and conditions in Schedule “D” will apply in addition to the terms and conditions of this Agreement.

4.9. Hosted Services. If Customer purchases Hosted Services pursuant to a Purchase Order, the terms and conditions in Schedule “E” will apply in addition to the terms and conditions of this Agreement.

### 5. INVOICES, DELIVERY, ACCESS AND PAYMENT
5.1. Invoices. Upon the delivery of any BlueCat Offering or any other BlueCat products or services, BlueCat shall issue Customer an invoice. BlueCat shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.2. Payment Terms, No Refund. All invoices are due, and Customer agrees to pay each such invoice, in full thirty (30) days from the date of invoice receipt without deduction or set off. Except as otherwise permitted in this Agreement, once paid, fees are non-refundable. All applicable sales and use taxes shall be identified on the invoice and are the responsibility of the Customer. In the event of payment after the due date, interest shall be payable on the overdue amount at the rate of one and one half (1.5%) percent per month, calculated and compounded monthly, or the maximum rate permitted by law, whichever is less, calculated from the due date to the date of payment. All prepaid fees are non-refundable. Should Customer terminate (or not renew prior to contract end date) annual Support services and subsequently re-instates them, Customer may be subject to the then-current reinstatement fee. The reinstatement fee shall be computed as the sum of the following: (i) amount that would have been paid by the Customer for the past Agreement period(s) had coverage been maintained continuously.

5.3. Delivery, Risk of Loss, Access. (a) For Software Products or Ancillary Service Software provided via Appliances, BlueCat shall arrange for delivery of Appliances to the address indicated in the Purchase Order, provided that all costs related to shipping and insurance of the Appliances are paid by the Customer. Delivery of Appliances and risk of loss will pass to Customer FOB shipping point. (b) For Software Products provided for download and installation on Customer equipment or environment or for any other Ancillary Service Software, BlueCat shall arrange for virtual delivery of such software by making it available for download, such as providing a license key, at which point delivery will be deemed to be complete. (c) For Cloud Services or the cloud services portions of the DNS Flex Services, BlueCat shall arrange for delivery by making such services available for use by providing login credentials to Customer, at which point delivery will deemed complete.

5.4. Appliance Warranty. Any applicable Appliance warranty is described in the BlueCat Customer Care Support Handbook.

5.5. Software and Appliance Remedy. Upon a valid software warranty claim by Customer, BlueCat shall, in its sole discretion: (a) in the case of a defective Appliance, repair or replace the Appliance, (b) in the case of any other Software Product or any Ancillary Service Software, deliver a replacement copy of such Software, or (c) where (a) and (b) are not successful after a reasonable remedy period, refund all fees paid by Customer and attributable to the portion of the period giving rise to the warranty claim. The foregoing remedies are BlueCat’s sole obligation and Customer’s sole remedy in the event of a valid warranty claim under this Section 5.5.

6. LIMITED WARRANTIES FOR SOFTWARE AND APPLIANCES, DISCLAIMER

6.1. Software Product Warranty; Ancillary Service Software Warranty. For a period of sixty (60) days following delivery, all ordered Software Products and Ancillary Service Software shall be free from material defects, free from material errors, free from all known viruses (as identified using commercially reasonable steps and antivirus software) and will perform substantially in accordance with its Documentation. Such warranty does not apply: (a) to any change or service to such software made by any party other than BlueCat or its authorized agent; (b) to the operation of such software with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) if such software was used in a manner other than as contemplated in this Agreement or the Documentation; and (d) to failure by Customer to report a warranty claim within the warranty period specified in this Section 6.1.

6.2. Appliance Warranty. Any applicable Appliance warranty is described in the BlueCat Customer Care Support Handbook.

6.3. Sole Software and Appliance Remedy. Upon a valid software warranty claim by Customer, BlueCat shall, in its sole discretion: (a) in the case of a defective Appliance, repair or replace the Appliance, (b) in the case of any other Software Product or any Ancillary Service Software, deliver a replacement copy of such Software, or (c) where (a) and (b) are not successful after a reasonable remedy period, refund all fees paid by Customer and attributable to the portion of the period giving rise to the warranty claim. The foregoing remedies are BlueCat’s sole obligation and Customer’s sole remedy in the event of a valid warranty claim under this Section 6.3.

6.4. Warranties for Software and Appliances, Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6 OR SCHEDULE “C”, BLUECAT DOES NOT REPRESENT OR WARRANT THAT THE BLUECAT OFFERINGS, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY OR ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF ANY OF THEM, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.2, THIS SECTION 6, AND SCHEDULE "C", THE BLUECAT OFFERINGS, ANCILLARY SERVICE SOFTWARE, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLUECAT HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABILITY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, CURRENCY, RELIABILITY, SECURITY, OR UNINTERRUPTED USE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, BLUECAT EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER’S USE OF ANY OF THE BLUECAT OFFERINGS, ANCILLARY SERVICE SOFTWARE, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES OR PROFESSIONAL SERVICES IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

7. CONFIDENTIALITY, NON-DISCLOSURE

7.1. Non-Disclosure. Each of the Parties agrees that it will not: (a) make use of the Confidential Information of the disclosing Party other than to perform its obligations under this Agreement; or (b) in any way disclose any Confidential Information of the disclosing Party to any person or entity, other than its own personnel to the extent necessary to give effect to this Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations no less protective than those set forth in this Agreement. Each receiving Party shall safeguard the disclosing Party’s Confidential Information using the same standard it employs to safeguard its own confidential information of like kind, but in no event less than a commercially reasonable standard of care.

7.2. Destruction of Confidential Information. Upon the termination of this Agreement, or at any time at the disclosing Party’s request, the recipient Party shall destroy Confidential Information of the disclosing Party in its possession or control except to the extent it would be unreasonably burdensome to destroy such Confidential Information (such as archived records), and such information will continue to be treated as Confidential Information, notwithstanding any termination or expiration of this Agreement. Upon the request of the disclosing Party, the recipient Party shall certify in writing that all materials containing Confidential Information of the disclosing Party have been destroyed and no further Confidential Information of the disclosing Party is in the possession or control of the recipient Party.
7.3. No Rights to Confidential Information. All Confidential Information remains the sole property of the disclosing Party and no license or other rights to Confidential Information is granted or implied by this Agreement.

7.4. Required Disclosure. In the event that Confidential Information has been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient, then such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure. Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

8. OWNERSHIP, INTELLECTUAL PROPERTY

8.1. Ownership. As between the parties, all ownership and Intellectual Property Rights in and to the BlueCat Offerings, Ancillary Service Software, Appliances, Managed Services, Hosted Services and Professional Services, belong to BlueCat, its Affiliates or its licensors. Customer receives no title or ownership in any of the foregoing. The Software Products and any Ancillary Service Software provided to Customer pursuant to this Agreement are licensed, not sold, and Customer receives no title or ownership in any of the foregoing. BlueCat reserves all rights not expressly granted under this Agreement.

8.2. Service Results. All Intellectual Property Rights in and to the Service Results belong to BlueCat. Customer acknowledges and agrees that BlueCat may monitor and analyze, and that the Service Results may include, information based on the data of BlueCat’s customers, including Customer Data. During and after the Subscription Period, BlueCat may use Customer Data and Service Results for its own internal purposes, such as to develop, test, increase service and product value, and optimize the BlueCat Offerings.

8.3. Customer Data. All ownership rights in and to Customer Data belong to Customer. Customer agrees that BlueCat may use, process and transmit Customer Data to provide the BlueCat Offerings, Ancillary Service Software, Appliances, Managed Services, Hosted Services and Professional Services, in each case in accordance with its Privacy Statement available at https://www.bluecatnetworks.com/privacy/. BlueCat acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

9. INDEMNIFICATION

9.1. BlueCat’s Indemnification Obligations. BlueCat shall indemnify and defend Customer against any and all third party claims or demands that the BlueCat Offerings (or any portion thereof) violate a third party’s Intellectual Property Rights in Canada, the United States or Japan and all amounts required to be paid in a settlement approved by BlueCat or awarded by a court in a final, non-appealable judgement; provided: (a) Customer has promptly notified BlueCat of such claim and BlueCat is not prejudiced by any delay by Customer; (b) BlueCat shall have control over the defense of the claim, provided that any settlement or resolution entered into by BlueCat shall not require any admission of liability or any payment by Customer; (c) Customer has not made any admission against BlueCat’s interests and has not agreed to any settlement of any claim or demand without BlueCat’s consent; and (d) Customer shall cooperate with BlueCat in the defense of the claim, at BlueCat’s expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

9.2. Exceptions to BlueCat’s Indemnification Obligations. Notwithstanding Section 9.1, BlueCat shall be under no obligation to indemnify or defend Customer if any infringement claim or demand by a third party arises as a result of any: (a) access or use of the BlueCat Offerings in violation of or inconsistent with this Agreement or the Documentation; (b) modification to the BlueCat Offerings by a party other than BlueCat or its authorized agents, which modification has resulted in the claim or demand by the third party; (c) combination of the BlueCat Offerings with any computer program, software, hardware or equipment where such claim of infringement would not exist without such combination; (d) use of a superseded version of the Software or Ancillary Cloud Services Software where use of a then-current version would avoid any claim of infringement; or (e) access to or use of the BlueCat Offerings after BlueCat notifies Customer to discontinue such access or use.

9.3. Additional Infringement Remedies. At BlueCat’s sole expense and discretion, in response to any pending or potential infringement claim, BlueCat may: (a) procure for Customer the right to continue using the offending BlueCat Offering or applicable portion thereof; (b) replace or modify the offending BlueCat Offering or applicable portion thereof so that it is non-infringing; or (c) terminate this Agreement either entirely or only as it relates to the offending BlueCat Offering in question or the applicable portion thereof and upon return of the BlueCat Offering in question or the applicable portion thereof or certification of destruction, refund to Customer the pro rata unused portion of any prepaid fees allocable to such part(s) of the BlueCat Offerings that is (are) terminated. For software licensed on a perpetual basis, such refund shall be based on the unamortized or un-expensed portion of the purchase price allocated to that portion of the Software, based on a three-year straight line amortization.

9.4. Sole Remedy. Sections 9.1 and 9.3 shall constitute Customer’s sole remedy from BlueCat in respect of infringement claims and demands.

9.5. Reserved.

10. LIABILITY, LIMITATIONS AND EXCLUSIONS

10.1. LIMITATIONS. THE LIMITATION OF LIABILITY SET FORTH IN THE UNDERLYING GSA SCHEDULE CONTRACT BETWEEN ORDERING ACTIVITY AND EC AMERICA SHALL APPLY TO CUSTOMER.

11. SUBSCRIPTION PERIODS, AGREEMENT TERM, TERMINATION AND SUSPENSION

11.1. Subscription Periods; Renewal. The Subscription Periods may be renewed for additional successive one (1) year terms by executing a new Purchase Order at the then current GSA Schedule Pricelist fee for the applicable BlueCat Offerings and Professional Services and may not be cancelled with less than sixty (60) days’ notice prior to the expiration of the then-current period. BlueCat will provide (a) Customer, if purchasing direct, or (b) Immix or other channel partner if Customer is purchasing through the channel, with ninety (90) days notice of any renewal of Subscription Period. Customer must
confirm renewal of the subscription period within the ninety (90) day period; otherwise, the subscription period is considered expired and Customer must immediately cease using the Software and Software Products and delete all virtual instances of the Software and all Services shall immediately cease.

11.2. Term of Agreement. This Agreement is effective during the period commencing as of the Effective Date and expires on the date that the last Purchase Order hereunder expires or is terminated, unless this Agreement is terminated earlier in accordance with this Agreement.

11.3. Termination for Breach. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, BlueCat shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.4. Suspension of Cloud Services or DNS Flex Services. In the event that BlueCat, acting reasonably, suspects or learns of any of the following described circumstances, then BlueCat may immediately temporarily suspend Customer's access to and use of the Cloud Services and/or DNS Flex Services, in addition to any other remedies BlueCat may have: (a) breach of the Acceptable Use Policy; (b) Customer's failure to cooperate with BlueCat's reasonable investigation of any suspected violation of this Agreement; (c) access or manipulation of the Cloud Services or DNS Flex Services without BlueCat's consent; (d) any circumstance that requires suspension of the Cloud Services or DNS Flex Services in order to protect the BlueCat Offerings, BlueCat, or its customer's data; or (e) suspension required by law.

11.5. Termination Obligations. Upon the earlier of termination of this Agreement, or termination or expiration of any outstanding Purchase Order or Subscription Period, Customer shall (a) delete, return or destroy all instances of Software Products, Ancillary Service Software, Appliances and any Documentation and, upon request, certify to compliance with this Section 11.5(a); (b) cease to access and use the Cloud Services, DNS Flex Services and any Documentation; and (c) upon request, confirm in writing compliance with Section 7.2. With respect to Cloud Services and DNS Flex Services, BlueCat shall make Customer Data available to Customer for download for thirty (30) days following termination and BlueCat shall destroy all Customer Data (except for any aggregated anonymized information based on Customer Data) upon the expiry of such thirty (30) day period. Section 11.5(a) does not apply to Software Products licensed on a perpetual basis in the event that Customer terminates this Agreement pursuant to Section 11.3.

11.6. Survival. Notwithstanding the termination or expiry of this Agreement, all obligations which either expressly or by their nature are to continue after the termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 4.3, 5.1, 5.2, 6.4, 7, 8, 9, 10, 11.5, 11.6 and 12.

12. MISCELLANEOUS PROVISIONS

12.1. Audit; Monitoring. Subject to Government security requirements, BlueCat reserves the right to audit and monitor Customer’s use of the Cloud Services and compliance with this Agreement, including the Acceptable Use Policy.

12.2. Orders through Resellers. Section 5 shall not apply to orders placed through a reseller. All other terms and conditions in this Agreement shall apply to orders placed through a reseller.

12.3. Assignment. Without the prior written consent of BlueCat, Customer may not assign this Agreement or any of its rights or obligations hereunder, except to an Affiliate and provided such Affiliate agrees to be bound by the terms of this Agreement and Customer remains responsible for Affiliate's compliance with this Agreement, including payment of all fees. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

12.4. Press Releases, Marketing. BlueCat may refer to Customer for the limited purpose of identifying it as a customer in sales and marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

12.5. Entire Agreement, Amendment and Headings. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), contains the entire understanding of the Parties hereto on the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity’s minimum needs. No amendment or modification of this Agreement shall be effective or binding unless agreed to in writing by both Parties. Headings used in this Agreement are for convenience of reference only, and shall not be used to modify the meaning of or to interpret the terms and conditions of this Agreement.

12.6. Waiver, Severability. The waiver of any breach of this Agreement, or the failure of a Party to exercise or enforce any right under this Agreement, shall in no event constitute a waiver of any other breach, whether similar or dissimilar in nature, or prevent the exercise or enforcement of any right under this Agreement. If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall be unimpaired and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in this Agreement is limited by law, then BlueCat’s liability will be limited to the greatest extent permitted by law.

12.7. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any party other than BlueCat, Customer and their permitted assigns any benefits, rights or remedies.

12.8. Rights and Remedies. Except as expressly set out in this Agreement regarding the Service Level Schedule remedies and in Section 6 and Section 9, in the event of any breach of this Agreement, the rights and remedies of the Parties provided for in this Agreement shall not be exclusive or exhaustive, and are in addition to any other rights and remedies available at law.

12.9. Notices. Any notice required or otherwise provided for in this Agreement shall be given to BlueCat or Customer, as the case may be, at the physical or e-mail address set forth on the signature page of this Agreement, or as updated from time to time pursuant to a notice provided pursuant to this Section, with a copy to any individuals with whom the Parties typically communicate.

12.10. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).
12.11. **Export Controls.** Customer acknowledges and agrees that the BlueCat Offerings and any Software and Ancillary Service Software are subject to export controls under U.S., Canadian and other export control laws. Customer shall not directly or indirectly, whether to an Affiliate or a third party: (a) export, re-export, transfer, or release (herein referred to as "export") any component of the BlueCat Offering, including any Software and Ancillary Service Software, to any prohibited or restricted destination, person, or entity, or (b) access or use or allow any Authorized User, Affiliate or third party to access or use the BlueCat Offerings in a manner prohibited or restricted by export control laws. Customer shall comply with all applicable export control laws at all times.

12.12. **US Federal and State Government Customers.** The BlueCat Offerings are each a “commercial item” as that term is defined in Federal Acquisition Regulation (“FAR”) 2.101, consisting of “technical data”, “commercial computer software”, “commercial computer software documentation” and/or “commercial services” as such terms are defined in FAR 2.101 or used in FAR 12.211 and 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire only the rights set out in this Agreement for the BlueCat Offerings. Any further use, modification, reproduction, release, performance, display, disclosure, decompiling, or reverse engineering of any of the BlueCat Offerings is prohibited except to the extent expressly permitted by the terms of this Agreement. To the extent allowed by applicable law, this US Government end user provision is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software or technical data. Terms and conditions herein that are prohibited by federal law or procurement regulation are not enforceable against the U.S. government.

12.13. **Governing Law.** This Agreement is governed by the federal laws of the United States. The rights and obligations of the Parties under this Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act, or any version adopted by any state, does not apply to this Agreement.

12.14. **Counterparts; Delivery by E-mail.** This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by e-mail transmission will constitute valid and effective delivery of an original executed copy.

**SCHEDULE “A” DEFINITIONS**

In the Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings, and such meanings shall apply to both singular and plural forms of any such terms:

(a) “Access Methods” means the user identifiers and passwords for the Cloud Service or DNS Flex Services issued by Customer to Authorized Users pursuant to this Agreement;

(b) “Acceptable Use Policy” means BlueCat’s acceptable use policy located at https://www.bluecatnetworks.com/license-agreements/, as may be updated by BlueCat from time to time;

(c) “Affiliate” means a Party's direct or indirect parent or subsidiary corporation (or other entity), or any corporation (or other entity) with which the Party is under common control;

(d) “Agreement” means this Master Agreement, all schedules annexed hereto, each Purchase Order, and any other document incorporated by reference herein;

(e) “Ancillary Service Software” means any software provided by BlueCat that is required to be installed and executed in order to facilitate Customer’s use of the DNS Flex Services or Cloud Services, including the Service Points, any software applications made available for download, and any software resident or installed in any Appliance;

(f) “API” means BlueCat owned or licensed application programming interface made available by BlueCat as part of the DNS Flex Services or Cloud Services;

(g) “Appliance” means any physical computer hardware component sold by BlueCat where Software or any Ancillary Service Software is resident or installed;

(h) “Authorized User” means any employees, and agents of Customer, who Customer gives access to the Cloud Services or DNS Flex Services pursuant to this Agreement;

(i) “BlueCat” means:

BlueCat Networks (USA) Inc., located at 1000 Texan Trail, Suite 105, Grapevine, Texas 76051 USA, with respect to Customers located in the United States of America and Japan;

BlueCat Networks, Inc., located at 4100 Yonge Street, 3rd Floor, Toronto, Ontario, M2P 2B5 Canada, with respect to Customers located outside the United States of America and Japan; or

BlueCat Federal USA, Inc. located at 11710 Plaza America Drive, Suite 120, Reston, Virginia 20190 USA, with respect to Federal and State Government Customers located in the United States of America.

(j) “BlueCat Customer Care Support Handbook” means the support handbook available from BlueCat, as may be updated from time to time by BlueCat in its sole discretion. The current BlueCat Customer Care Support Handbook is attached hereto as Exhibit A;

(k) “BlueCat Offerings” means the following products and services or provided or made available by BlueCat: Software Products, Cloud Services and DNS Flex Services and any other products or services made available by BlueCat;

(l) “Cloud Services” means the DNS Edge cloud services made available by BlueCat for subscription by Customer, as well as any Ancillary Service Software and any Support for the Cloud Services, and any BlueCat Master Agreement 2019 March 11
software made available for access and use as part of the Cloud Services. “Cloud Services” exclude DNS Flex Services;

(m) “Confidential Information” means any and all information disclosed by the disclosing Party to the recipient Party pursuant to this Agreement relating to its products, services, customers, marketing, research and development, business and finances, information technology networks, including all technical information, data, documentation, code, security measures and procedures and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential. Non-public features of the Cloud Services and DNS Flex Services shall be considered Confidential Information. In addition, Documentation shall be considered Confidential Information. Confidential information shall not include information which a recipient Party can establish to have: (i) become publicly known through no action on the recipient's part; (ii) been lawfully known by the recipient prior to receipt; (iii) been independently developed by the recipient without reference to any information received from the disclosing Party; or (iv) been approved for public release by the written authorization of the disclosing Party. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception;

(n) “Customer Data” means the IP addresses, hostnames and DNS query logs and any other information that is uploaded or transmitted by Customer to BlueCat through any Cloud Services or the cloud services portion of the DNS Flex Services;

(o) “Documentation” means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the BlueCat Offerings, made available in electronic format from BlueCat, and any revisions, updates and supplements thereto, as such documentation may be amended by BlueCat from time to time or embedded in any BlueCat Offering;

(p) “DNS Flex Services” means the services made available from BlueCat for subscription by Customer, as well as any Ancillary Service Software (including Service Points) and any APIs, any Support for the DNS Flex Services, and any software made available of for access and use as part of the DNS Flex Services. DNS Flex Services exclude any Cloud Services;

(q) “Effective Date” is defined in the first paragraph of this Agreement;

(r) “e-Learning” means BlueCat’s computer based training courses made available to Customer as a Cloud Service;

(s) “first hop” has the meaning given to it in Section 3.9;

(t) “Hosted Services” means the hosted external DNS services available from BlueCat from time to time;

(u) “Intellectual Property Rights” means all intellectual property and other proprietary rights, including all rights provided under trade secret law, patent law, copyright law, trade mark or service mark law, design patent or industrial design law, semi-conductor chip or mask work law, and any other statutory provision or common law principle which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how, whether registered or not and including all applications therefor;

(v) “Material Provisions” means Sections 2, 3, 4, 5.1, 7, 8, 12.3, 12.11 and 12.12;

(w) “Party” means either BlueCat or Customer and “Parties” refers to both BlueCat and Customer;

(x) “Professional Services” means professional services provided by BlueCat to its customers in connection with the purchase, configuration and/or implementation of Software Products;

(y) “Purchase Order” means a written agreement signed by both parties, including an order schedule, a sales quote issued by BlueCat, a SOW, or any other document confirming any BlueCat Offerings to be purchased by Customer, any applicable Subscription Period(s), and any Professional Services to be purchased by Customer, in each case, as agreed to by BlueCat and Customer and consistent with the terms and conditions of this Agreement;

(z) “Service Level Schedule” means the service level schedule related to Cloud Service or the cloud services portion of the DNS Flex Services, as may be updated by BlueCat from time to time and published at https://www.bluecatnetworks.com/license-agreements/;

(aa) “Service Point” means the Software that the Customer deploys in their infrastructure that facilitates “first hop” capabilities in their DNS solution;

(bb) “Service Results” means any information, statistics, results, feeds, graphs, analysis and reports computed and generated by and from the DNS Flex Services or Cloud Services;

(cc) “Software” means the then current object code version of the computer program or application licensed by BlueCat to Customer pursuant to this Agreement, as evidenced either on an Appliance or available for download, in each case, as part of a Software Product;

(dd) “Software Products” means any and all software products offered by BlueCat for license, excluding DNS Flex Services. Software Products may include any Software, whether embedded on an Appliance or available for download, as well as any and all Ancillary Service Software and any APIs and Professional Services to be provided by BlueCat to the Customer;

(ee) “SOW” means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer;

(ff) “Subscription” means a subscription for the Subscription Period to (i) with respect to Software Products, license and use Software Products, and, to the extent ordered, to receive Support, ordered and paid for by Customer pursuant to one or more Purchase Orders; (ii) with respect to Cloud Services, to access and use the Cloud Services, and to receive Support for such Cloud Services, ordered and paid for by Customer pursuant to one or more Purchase
Orders; and (iii) with respect to DNS Flex Services, to access and use the DNS Flex Services, and to receive Support for such DNS Flex Services, ordered and paid for by Customer pursuant to one or more Purchase Orders;

(gg) "Subscription Period" mean the time period of each Subscription set out in the applicable Purchase Order and commences upon earliest delivery of the applicable BlueCat Offering. If no time period is set out in a Purchase Order, the Subscription Period will be the twelve (12) month period commencing upon delivery of the applicable BlueCat Offering;

(hh) "Support" means (i) for Software Products, the maintenance services relating to updates, upgrades, patches, bug fixes and other improvements to the Software and the technical support services as described in the BlueCat Customer Care Support Handbook and (ii) for Cloud Services or DNS Flex Services, the support services set out in the Service Level Schedule and the BlueCat Customer Care Support Handbook; and

(ii) "Unique Active IP" means a unique IP address in a DNS query that is issued through a Service Point where (i) the number of Unique Active IPs is measured monthly and (ii) the Service Point is placed as the first hop in the Customer’s DNS infrastructure.

SCHEDULE “B”
ADDITIONAL E-LEARNING TERMS AND CONDITIONS

1. e-Learning Services. All e-Learning Services to be provided by BlueCat are made available on a subscription basis per unique user pursuant to a Purchase Order. Each subscription commences on the date a user is provided access to the e-Learning Services and runs for a continuous period of time until the Subscription Period has expired.

2. Unique Users. Subscriptions to the e-Learning Services and instructor-led training courses are personal to each user and are non-transferable. Users may not share logons, passwords or licensed content. Customer is responsible for securing and protecting login and other access information from unauthorized disclosure or use.

3. Content. Licensed content is for internal training purposes only.

SCHEDULE “C”
ADDITIONAL PROFESSIONAL SERVICE TERMS AND CONDITIONS

In addition to the terms and conditions set forth in the BlueCat Master Agreement, which continue to apply to Professional Services to the extent not inconsistent herewith, the following terms and conditions apply specifically to Professional Services provided by BlueCat:

1. Professional Services. All Professional Services to be provided by BlueCat to Customer shall be described in a SOW signed by both parties and referencing the Agreement. Each SOW must be consistent with the terms in this Agreement (including this Schedule "C") unless explicitly stated in the SOW.

2. Time and Materials. Unless explicitly stated in the SOW, all Professional Services are performed on a "time and material" basis. If requested, (a) BlueCat will provide regular updates on the services being performed and (b) BlueCat will not exceed the estimate in the SOW without Customer’s consent.

3. Expenses. Customer agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

4. Change Orders. If either Party wishes to make a change to the scope of work set out in a SOW, a change order must be submitted which describes the scope of the Professional Services to be performed, the revised time frame and a cost estimate. Each change order must be accepted by both parties to be binding.

5. Scheduling. Unless explicitly stated in the SOW, Professional Services will be provided between Monday and Friday, from 8:00 am to 5:00 pm local time. Weekend and overtime rates apply outside these days and hours.

6. Delivery Dates. Delivery dates in the SOW are estimates only and are not binding completion dates.

7. Invoices. Unless otherwise agreed, BlueCat will invoice Customer for services performed and expenses incurred on a monthly basis. Payment is due thirty (30) days from invoice receipt.

8. Prepaid. Prepaid service days expire unless used within twelve (12) months of the purchase date as specified in the Purchase Order. No credit or refund shall be due to Customer for expired or unused services.

9. Limited License re. Deliverables. BlueCat is not providing or licensing any software to Customer in connection with the Professional Services, except for specific deliverables identified in the SOW ("Deliverables"). The Deliverables are not “work made for hire” and any Intellectual Property Rights in the Deliverables remain with BlueCat. The Deliverables are licensed to Customer in connection with the Software upon the same terms and conditions as set forth in the Master Agreement.

10. Warranty. For a period of thirty (30) days from the performance of the Professional Services, BlueCat warrants that the Professional Services are performed in a professional manner using qualified and experienced personnel familiar with BlueCat Offerings. Any warranty claims must be reported to BlueCat within thirty (30) days of the related Professional Services.

11. Exceptions to Warranty. The warranty set forth in Section 10 does not apply upon any of the following: (a) any change, addition, deletion or other modification was made to the Deliverables, except as specifically authorized in writing by BlueCat; and (b) failure by Customer to report a deficiency within the specified warranty period.

12. Warranty Remedy. Upon a valid deficiency claim by Customer, BlueCat shall remedy the deficiency within a reasonable period of time and failing that, BlueCat shall refund all Professional Services fees paid by Customer and attributable to the deficiency giving rise to the warranty claim.

13. Independent Contractor. The manner and means used by BlueCat to perform the Professional Services are in the sole discretion and control of BlueCat. BlueCat may make use of subcontractors to perform the Professional Services provided BlueCat shall remain responsible for the performance of its subcontractors.
14. **Expiry.** Unless otherwise agreed, a SOW expires if the project is not commenced within six (6) months.

15. **Reserved.**

**SCHEDULE “D”**

**ADDITIONAL MANAGED SERVICES TERMS AND CONDITIONS**

1. **Managed Services for End Customers.** The Parties acknowledge that the Customer is purchasing certain Software Products in order to manage or host DNS records (“Managed Services”) for its end user customer (“End Customer”). Customer shall obtain in writing each End Customer’s agreement and acknowledgement that the Software Products are for such End Customer’s internal use only. Customer shall use the Software Products only for providing Managed Services to End Customers.

2. **Transfer of License for Managed Services.** In the event of any termination of the relationship between Customer and the End Customer, Customer may transfer to End Customer or if instructed to do so by End Customer, transfer to a replacement provider, this Agreement including the license(s) for the Software. Should Customer’s transfer of the Software Products be to a replacement provider, such replacement provider’s license to the Software Products and/or Services shall be solely and exclusively for use in that replacement provider’s provision of Software and/or Services to End Customer. In order to effect such a transfer, Customer shall provide BlueCat with prior written notice of the transfer and shall execute, and arrange for End Customer to execute, an assignment agreement whereby End Customer and, if applicable, its replacement provider, agree to comply with the terms and conditions of this Agreement.

3. **Restrictions on Use for Managed Services.** If Customer is using any of the Software Products to provide Managed Services, then Customer shall ensure each of its End Customers using Software Products as part of Customer’s Managed Service offering signs and returns the Simplified EUA which is attached here as Exhibit B.

**SCHEDULE “E”**

**HOSTED EXTERNAL DNS SERVICE TERMS AND CONDITIONS**

1. **Hosted External DNS Services.** Subject to payment of Hosted Services fees, BlueCat shall provide the Hosted Services upon and conditions set forth herein.

2. **Term.** Hosted Services may be renewed annually for additional successive one (1) year terms by executing a new Agreement in writing at the then current fee in accordance with the GSA Schedule pricelist.

3. **Monitor of Use.** BlueCat reserves the right to monitor Customer’s use of the Hosted Services to ensure compliance with the terms herein. BlueCat shall invoice Customer for any over-usage of the Hosted Services at BlueCat’s then-current price in accordance with the GSA Schedule pricelist.

4. **Customer Warranties.** Customer represents and warrants that it is the registrant or duly authorized representative with respect to any domain names submitted to BlueCat in connection with the Hosted Services and that it has all right, title and interest to use the data which Customer provides to BlueCat to perform the Hosted Services. Customer further acknowledges and warrants that (a) it is entirely responsible for all content and information directly or indirectly delivered to or passed through BlueCat by the Customer, its customers or end users, and (b) BlueCat exercises no control over and accepts no responsibility for such content or information.

5. **BlueCat Warranty.** BlueCat warrants that the Hosted Services will be delivered substantially as described in the Service Levels identified below. BlueCat does not warrant the Hosted Services against malfunction or cessation of internet services by internet providers or of any of the networks that form the internet which may make the Hosted Services temporarily or permanently unavailable.

6. **Warranty Remedy.** Upon a valid deficiency claim by Customer pursuant to Section 5 above, BlueCat shall provide a credit for future Hosted Services as set forth in Section 8 below.

7. **Reserved.**

8. **Service Level Agreement.**

(a) During the term of the Master Agreement, BlueCat shall provide Customer with access to Resolution Services without any Service Outages each month (the “Performance Objective”). “Resolution Services” means the ability to receive and answer well-formed DNS queries along all IP addresses on standard ports with 100% availability.

(b) “Service Outages” means that the Resolution Services were available less than 100% and shall specifically exclude (i) unavailability of the Resolution Services due to Customer’s misuse of the services, negligent or unlawful acts committed by Customer or its agents, acts or omissions of Customer’s domain name registrar, unavailability of the Customer’s network, and force majeure events; and (ii) suspension of the services by BlueCat in accordance with the terms herein. BlueCat, in its sole and reasonable discretion, shall determine whether an event is considered a Service Outage.

(c) Upon Service Outages lasting, in aggregate, less than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one day of Resolution Services. Upon Service Outages lasting, in aggregate, more than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one week of Resolution Services.

(d) All Service Outages and all claims for credit must be reported by Customer to BlueCat within thirty days of the event giving rise to the claim. Customer shall provide to BlueCat all relevant details and documentation supporting its claim of a Service Outage to allow BlueCat to investigate the claim.

(e) Upon failure by BlueCat to maintain 99.9% uptime (as measured on a monthly basis) of Resolution Services for three consecutive months, Customer may terminate the Hosted Services.

(f) Credits may only be used towards Hosted Services fees. Customer’s sole and exclusive remedy in the event BlueCat fails to meet the Performance Objectives is to receive credits as set forth herein and BlueCat shall have no further liability to Customer.

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**EXHIBIT A**

CUSTOMER CARE HANDBOOK

(to be attached in final version)

**EXHIBIT B**
SIMPPLIED EUA
(to be attached in final version)
BlueLight LLC  
1876 Bureau drive  
Fayetteville, NC 28312  

EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)  

1. **Scope.** This Rider and the attached BlueLight LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.  

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable, and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:  

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.  

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.  

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind
the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by
the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into
a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges, or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any
U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Software License Agreement

1. Definitions.

“Blue Light” means Blue Light, LLC, a Delaware limited liability company.

“IBM i2 Software” means International Business Machines Corporation’s i2 Products: Enterprise Insight Analysis Core, Enterprise Insight Analysis Premium and the Analyze applications.

“Internal Network” means a private, proprietary network resource accessible only by your employees and individual contractors (i.e., temporary employees). Internal Network does not include portions of the Internet or any other network community open to the public.

“Software” means (a) the object code version of Blue Light’s software known as the Blue Light Management Console software and related explanatory written materials and files (“Documentation”); and (b) any modified versions and copies of, and upgrades, updates and additions to, such software and Documentation, provided to you by Blue Light at any time, to the extent not provided under a separate agreement.

2. Software License. Blue Light grants you a non-transferable, non-exclusive license to use the Software for your internal purposes (and not for the benefit of any third party) solely in connection with your use of the IBM i2 Software. You may install and use one copy of the Software in support of one deployment of the IBM i2 Software. The deployment may include multiple instances of the IBM i2 software used as separate environments in support of the production IBM i2 software (e.g., production, development, training, disconnected operations). You may make a reasonable number of backup copies of the Software, provided your backup copies are not installed or used for other than archival purposes.

3. RESERVED.

4. Intellectual Property Ownership. The Software and any authorized copies that you make are the intellectual property of and are owned by Blue Light. The structure, organization and code of the Software are the valuable trade secrets and confidential information of Blue Light. The Software are protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Blue Light.

5. Restrictions. Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software. You shall not modify, adapt, or translate the Software. You shall not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software except to the extent you may be expressly
permitted under applicable law to decompile only in order to achieve interoperability with the Software. The Software is designed and provided to you as a single product to be used as a single product with the IBM i2 Software. You shall not use the Software on a stand-alone basis or with software or products other than the IBM Application Solution. YOU SHALL NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN, OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, OR THIS AGREEMENT, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY'S COMPUTER EXCEPT AS MAY BE EXPRESSLY PERMITTED HEREIN. You shall not use or offer the Software on a service bureau basis.
6. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 BELOW, THE SOFTWARE ARE LICENSED TO YOU ON AN AS-IS BASIS, WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Section 6 will survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Software after termination of this Agreement.

7. Express Warranty: The Blue Light Management Console and I2 Software provided herein is warranted by Blue Light to be free from defects in workmanship for a period of ninety (90) days under normal use from the date of actual delivery to buyer. Blue Light’s liability hereunder is limited to remedying any defect or to replacing any of the software that are found defective.

8. Export Rules. You agree that the Software and shall not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the “Export Laws”). In addition, if the Software is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export Laws from receiving the Software.

9. RESERVED.

10. Reserved.

Software and Blue Fusion Appliance License Agreement

1. Definitions.

“Blue Light” means Blue Light, LLC, a Delaware limited liability company.

“Blue Fusion Appliance” means Blue Light LLC’s hardware server appliance used as a delivery vehicle for the IBM i2 Software and the Blue Light Management Console.

“IBM i2 Software” means International Business Machines Corporation’s i2 Products: Enterprise Insight Analysis Core, Enterprise Insight Analysis Premium and the Intelligence Analysis Portal applications.

“Internal Network” means a private, proprietary network resource accessible only by your employees and individual contractors (i.e., temporary employees). Internal Network does not include portions of the Internet or any other network community open to the public.
"Software" means (a) the object code version of Blue Light’s software known as the Blue Light Management Console software and related explanatory written materials and files ("Documentation"); and (b) any modified versions and copies of, and upgrades, updates and additions to, such software and Documentation, provided to you by Blue Light at any time, to the extent not provided under a separate agreement.

2. **Software License.** Blue Light grants you a non-transferable, non-exclusive license to use the Software for your internal purposes (and not for the benefit of any third party) solely in connection with your use of the IBM i2 Software. You may install and use one copy of the Software in support of one deployment of the IBM i2 Software. The deployment may include multiple instances of the IBM i2 software used as separate environments in support of the production IBM i2 software (e.g., production, development, training, disconnected operations). You may make a reasonable number of backup copies of the Software, provided your backup copies are not installed or used for other than archival purposes.

3. **Appliance License.** Blue Light grants you a non-transferable, non-exclusive license to use the Blue Fusion Appliance for your internal purposes and in the demonstration of the functionality of the associated i2 Software and Blue Light Management Console.

4. **RESERVED.**

5. **Intellectual Property Ownership.** The Software and Blue Fusion Appliance and any authorized copies that you make are the intellectual property of and are owned by Blue Light. The structure, organization, and code of the Software and Blue Fusion Appliance are the valuable trade secrets and confidential information of Blue Light. The Software and Blue Fusion Appliance are protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Blue Light.

6. **Restrictions.** Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software. You shall not modify, adapt, or translate the Software. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted under applicable law to decompile only in order to achieve interoperability with the Software. The Software is designed and provided to you as a single product to be used as a single product with the IBM i2 Software. You shall not use the Software on a stand-alone basis or with software or products other than the IBM Application Solution. YOU SHALL NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN, OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, THE BLUE FUSION APPLIANCE OR THIS AGREEMENT, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY’S COMPUTER EXCEPT AS MAY BE EXPRESSLY PERMITTED HEREIN. You shall not use or offer the Software on a service bureau basis.

7. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10 BELOW, THE SOFTWARE AND APPLIANCE ARE LICENSED TO YOU ON AN AS-IS BASIS, WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION,
MERCHANDABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Sections 6 and Section 7 will survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Software after termination of this Agreement.

8. RESERVED.

9. Export Rules. You agree that the Software and/or Blue Fusion Appliance shall not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the “Export Laws”). In addition, if the Software or Blue Fusion Appliance is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export Laws from receiving the Software or Blue Fusion Appliance.

10. Express Warranty: The Blue Fusion Appliance provided herein is warranted by Blue Light to be free from defects in workmanship and in material for a period of ninety (90) days under normal use from the date of actual delivery to buyer. Blue Light’s liability hereunder is limited to remedying any defect or to replacing any of the equipment, or the components thereof, that are found defective.

11. RESERVED.

Services Agreement Terms and Conditions

1. Services.

a. Subject to the terms and conditions set forth in this Agreement, the underlying GSA Schedule contract, and the purchase order, BL will provide the Services set forth in the Service Addendum. Defined terms used in this Agreement shall have the meanings ascribed to them in Section 8 hereof if not otherwise defined in this Agreement.

b. BL shall not be responsible for securing any intellectual property rights that may be owned or retained by third parties, unless specifically set forth in the Service Addendum.

c. BL’s personnel will perform their work for Ordering Activity both remotely, and, as agreed by Ordering Activity and BL, on the Ordering Activity’s premises. Ordering Activity agrees to provide necessary working space and facilities, and any other reasonable services and materials BL or its personnel may need in order to perform the work assigned to them. Subject to Government security requirements, Ordering Activity agrees to provide BL support personnel with access to Ordering Activity systems. This may include customer portal access, VPN access, or dialup out-of-band management access to each remote site, in addition to passwords, access codes, or security devices.

d. Ordering Activity acknowledges that BL may require documents, information and cooperation by Ordering Activity in order to properly perform the Services hereunder and that BL is not responsible for
(i) errors, delays, or other consequences arising from the failure of Ordering Activity to provide such documents, information, or cooperation, or (ii) from the inaccuracy or incompleteness of any such documents or information.

2. **RESERVED.**

3. **Reserved.**

4. **Warranty Disclaimer.**
   
a. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE SERVICE ADDENDUM, BL DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BL DOES NOT WARRANT THAT THE SERVICES (INCLUDING ANY HARDWARE OR SOFTWARE) PROVIDED OR LICENSED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.**

5. **RESERVED.**

6. **Reserved.**

7. **Reserved.**

8. **Definitions.** The following defined terms shall apply to capitalized terms in this Agreement.

   **Affiliate:** As to a party, means any entity controlling, controlled by, or under common control with such party, where the term "control" and its correlative meanings, "controlling," "controlled by," and "under common control with," means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity. Without limiting the foregoing, but in addition thereto, any Affiliate of, or subsidiary of, BL Technologies, Inc. shall be deemed to be an Affiliate of BL.

   **BL Parties:** BL, its Affiliates and their members, shareholders, managers, officers, directors, employees, contractors, and agents.

   **Customer Parties:** Customer and the Affiliates, owners, officers, directors, employees, contractors, and agents of Customer or of the Affiliates of Customer.

   **Services:** All services, equipment, software and other offerings of any kind set forth in the Service Addendum to be provided or licensed by BL to Ordering Activity pursuant to this Agreement.
EXHIBIT A

Service Addendum

1. Services; Products Sales.

1.1 Services. BL shall perform the professional, support or application services (the “Services”) specified in the applicable purchase order.

1.2 Reserved.

1.3 Support Services.

1.3.1 With respect to Services identified as “support services” in the purchase order (“Support Services”), BL will neither be responsible for nor obligated to provide such Support Services in the event support or maintenance is necessitated by any of the following: (a) faulty electrical systems external to devices not furnished by BL; (b) accident, transportation, neglect, or misuse; (c) repair, damage, or increase in service time resulting from failure to provide a suitable installation environment (including but not limited to failure of or failure to provide adequate or proper electrical power, air conditioning, humidity control, or protection from dust or dirt from the outside or within the building), or from use of supplies or materials not meeting the network specifications set forth in any order accepted by BL for such installation unless such supplies or materials were recommended or used by BL; (d) damage or errors attributable to misuse or use not in accordance with applicable documentation; or (e) such service is necessitated by or the result of malfunctions or other problems of software or hardware other than software or hardware provided by BL.

1.3.2 Ordering Activity shall designate and provide BL with a primary contact for Support Services. Ordering Activity shall not permit persons other than authorized representatives of BL to perform support and maintenance services, adjustment, repairs or modifications to any Components for which Support Services are provided (the “Supported System”) without the prior written consent of BL. Ordering Activity will assist BL in maintaining a remote access connection via the Internet to the Supported Systems at Ordering Activity’s facilities seven (7) days a week, twenty-four (24) hours per day.

1.4 Lease. With respect to any hardware identified in the purchase order as “Leased Hardware”, BL hereby agrees to lease the Leased Hardware to Ordering Activity for the term. Following delivery of the Leased Hardware to Ordering Activity, Ordering Activity shall bear reasonable risks of loss, damage, theft, or destruction to the Leased Hardware, excluding reasonable wear and tear. Ordering Activity shall not repair or maintain the Leased Hardware without BL’s prior written consent. Ordering Activity shall notify BL of any known or threatened damage to, or loss of, the Leased Hardware. BL shall be solely responsible for all Leased Hardware repair and maintenance expenses pre-approved by it in writing. Notwithstanding the foregoing, in the event any damage to or loss of Leased Hardware arises out of the negligence or willful misconduct of Ordering Activity, Ordering Activity shall be solely responsible for all costs and expenses incurred in connection with repairing, maintaining, or replacing such Leased Hardware. Except as set forth below in this Section 1.4, nothing contained in this Agreement shall give or convey to Ordering Activity any right, title or interest in or to
the Leased Hardware. Ordering Activity shall not: (i) not enter into any sublease, loan, or similar arrangement with respect to the Leased Hardware or (ii) transfer, assign, convey, encumber, pledge, or otherwise dispose of the Leased Hardware or any interest therein, and any attempt by Ordering Activity to do any of the foregoing without BL’s prior written consent shall be void. Upon the expiration or termination of this Service Addendum, Ordering Activity shall promptly either: (i) prepare, package, and ship the Leased Hardware in accordance with BL’s reasonable instructions; (ii) provide BL with access to Ordering Activity’s facilities so that BL may prepare, package, and ship the Leased Hardware for return to BL or (iii) purchase the Leased Hardware from BL by issuing a purchase order to BL within thirty (30) days of the date of termination. Any such sale of the Leased Hardware to Customer shall be on an “as-is” basis.

2. Acceptance. Within two business days of BL notifying Ordering Activity via email that Services identified in the purchase order as “Professional Services” are completed (the “Testing Notice”), Ordering Activity shall test the Component deliverables identified as work product (“Work Product”) to determine whether they comply with the specifications set forth in the purchase order. Ordering Activity shall promptly either advise BL that the Work Product is accepted (an “Acceptance Notice”) or deliver to BL a written statement describing in detail the reasons why the Work Product does not comply with such specifications (a “Non-Compliance Notice”). Upon receipt of a Non-Compliance Notice, BL shall correct the Work Product so that the Work Product complies with such specifications, and the foregoing testing procedure shall be repeated until Ordering Activity accepts the Work Product. The foregoing remedies shall be Ordering Activity’s remedies with respect to Work Product for which a non-compliance is claimed. The provision of an Acceptance Notice or the failure to provide a Non-Compliance Notice within two (2) Business Days of the date of the Testing Notice shall constitute acceptance of the Work Product by Ordering Activity. Ordering Activity may not withhold its acceptance of the Work Product as a result of defects therein that do not materially affect the performance or functionality thereof.


3.1 BL Software. Any Software identified in the purchase order as “BL Software” and all associated documentation shall be the sole and exclusive property of BL (the “BL Software”). All rights in and related to the BL Software, including, without limitation, copyrights, trademarks, trade secrets, patents, and all other intellectual property rights or proprietary rights, are hereby exclusively reserved by BL. If the applicable purchase order includes BL Software, Ordering Activity’s sole right to use the BL Software shall be set forth in the above Software License Agreement (the “EULA”) and it is expressly understood that no right (other than pursuant to the EULA) or title to or ownership in or to the BL Software is transferred or granted to Ordering Activity under this Service Addendum.

3.2 Third Party Software. Software provided under this Agreement may include software owned by third parties (“Third Party Software”).

4. Reserved.

5. Reserved.

6. Limited Warranty. BL shall provide the Services in a professional manner consistent with industry standards applicable to the nature of the Services. Any claim for a breach of the foregoing warranty must be made by Ordering Activity within five (5) days following the completion of the applicable
Services. If Ordering Activity fails to provide notice of such claim within such five (5) day period, Ordering Activity shall be deemed to have waived its rights to make a claim for a breach of the foregoing warranty. Ordering Activity’s remedy and BL’s sole obligation for any breach of the foregoing warranty or any other claim regarding the Services or Work Product shall be for BL to re-perform the applicable Service or repair the applicable Work Product. BL will pass through and assign to Customer any third party’s warranty which BL receives in connection with a Component provided to Customer to the extent such pass through and assignment is permitted by such third party. BL does not and cannot warrant, guarantee, or make any representations regarding the performance, use or results of the use of the Components in terms of correctness, accuracy, reliability, currentness, or otherwise.

7. **Reserved.**
1. **License Grant**: Blue Light hereby grants to you a limited, non-exclusive, non-sub-licensable license to access one training module in the Training Program for educational purposes only. You may not, nor cause or permit any other person to, reproduce, download, disseminate, disassemble, decompile, reverse engineer, translate, sell, manufacture, sublicense, distribute, transfer, modify, adapt, creative derivative works from the Training Program.

2. **Ownership**: Blue Light is and remains the exclusive owner of all right, title, and interest (including copyright, patent, trade secret and other proprietary rights) in and to the Training Program. Nothing in this Agreement will be construed as granting you any title or interest in or to the Training Program. You agree not to contest the validity of Blue Light’s rights or to perform any act adverse to Blue Light’s rights.

3. **Online User and User Information / Passwords**: You will be asked to provide certain information to gain access to the Training Program. You agree that the information you provide is true, accurate, and complete and that you will not register under a name of, or attempt to enter or use the Training Program under a name or ID that is not your own. You agree that it is your responsibility to maintain your access to the Training Program and keep your password and other information you provide confidential. You agree to immediately notify Blue Light or the institution reselling your Training Program if there is any known or suspected unauthorized use of your credentials to the Training Program.

4. **RESERVED.**

5. **NO WARRANTY**: BL shall provide the Training in a professional manner consistent with industry standards applicable to the nature of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE TRAINING PROGRAM IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

6. **RESERVED.**

7. **Reserved.**
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Blue Prism Software, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

l) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BLUE PRISM SOFTWARE, INC.

SOFTWARE LICENSE AND SUPPORT AGREEMENT

Indirect Term License

BY AND BETWEEN

(1) BLUE PRISM SOFTWARE, INC., a Delaware corporation with offices at 1688 Meridian Avenue, Suite 700 Miami Beach, Florida, 33139, USA ("Blue Prism"); and

(2) U.S. GOVERNMENT AGENCIES ("Ordering Activity"). For purposes of clarity, a U.S. Government agency is the "Ordering Activity", defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER OGP 4800.2I, as may be revised from time to time. Ordering Activity License Orders must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties.

BACKGROUND

(A) Blue Prism is a supplier of software and support services;
(B) Ordering Activity wishes to use Blue Prism’s software and to receive Blue Prism’s support services on the terms of this Agreement;
(C) Ordering Activity is acquiring Blue Prism’s software via a Reseller; and
(D) By both parties executing this Agreement in writing indicates Ordering Activity’s acceptance of the following terms.

TERMS AGREED

1 Definitions and Interpretation

1.1 In this Agreement, the following terms shall have the following meanings:

Acceptance Ordering Activity’s acceptance of the Software in accordance with Section 2.3

Commencement Date the date specified in a License Order (agreed between Ordering Activity and Reseller and relayed to Blue Prism); the beginning of the term for a given License Order

Confidential Information any and all information (whether oral, written or in some other tangible or permanent form) disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") or that is otherwise obtained by the Receiving Party under or in connection with this Agreement and that is marked as confidential, by its nature is confidential or relates to the business or affairs of the Disclosing Party including any License Key. Neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings.

Deliverables any and all software, documents, information, data, ideas, concepts, know-how, techniques and other material, things or items arising from or produced or supplied by Blue Prism in the course of the provision of the Support Services

Documentation the user manuals, help files, release notes and other documentation (excluding marketing materials) published by Blue Prism that is made available to Ordering Activity in connection with the Software

Environment the hardware and/or locations used by Ordering Activity, which must meet the minimum requirements specified by Blue Prism in its installation guide for the relevant version of the Software

Expenses any travel, accommodation, subsistence and other expenses incurred by Blue Prism in providing the Support Services, to the extent provided for in the applicable License Order

Fees the fees payable for the License and Support Services during the applicable Order Term (including Premium Support Fees, if applicable) in accordance with the GSA Pricelist.

Intellectual Property Rights any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, Know-How, Look and Feel, domain names and all similar rights (whether or not registered or capable of registration and whether subsisting in any part of the world), together with any and all goodwill relating or attached thereto and all extensions and renewals thereof

Know-How know-how, confidential information, trade secrets, experience, drawings, designs, production methods, code, notes, flow charts, discoveries, specifications, diagrams, technology, research, methods of formulation, results of tests and field trials, specifications of materials, composites of materials, formulas and processes and technical information including the benefit of all related obligations of confidentiality

License the license in Section 2 which gives Ordering Activity a right to use the Software

License Key a license key generated by Blue Prism that allows Ordering Activity to use the Software subject to the terms and conditions of this Agreement

License Order a document agreed between Ordering Activity and a Reseller for procurement of the Software by Ordering Activity through a Reseller

Look and Feel graphics, website navigation methods, HTML code, meta-tag structures and similar

GS-35F-0511T

https://www.immixgroup.com/contract-vehicles/gsa/lt-70/0511T/
Each party shall:

2.1 Blue Prism hereby grants to Ordering Activity a non-exclusive and non-transferable term license to use the Software (in object code only) during any active Term (defined below), subject to any restrictions set out in this Agreement (including in a License Order), for the purpose of automating and/or modifying Ordering Activity-related business procedures in accordance with the terms and conditions of this Agreement.

2.2 Except as permitted by law or this Agreement, Ordering Activity shall not be entitled to:

2.2.1 copy, translate, reverse engineer, reverse assemble, modify, adapt, create derivative works, decompile, merge, separate, disassemble, determine the source code of or otherwise reduce to binary code or any other human-perceivable form, the whole or any part of the Software;

2.2.2 sublease, lease, assign, sell, sub-license, rent, export, re-export, encumber, permit concurrent use of or otherwise transfer or grant other rights in the whole or any part of the Software;

2.2.3 use or permit use of the whole or any part of the Software to provide a computer services business, business process outsourcing facility or service, service bureau arrangement, network, time-sharing, outsourcing, application service provider, or similar arrangement;

2.2.4 remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed or embedded on or in the Software or the Documentation;

2.2.5 provide or otherwise make available the Software in whole or in part in any form to any person, without prior written consent from Blue Prism; or

2.2.6 use or permit the use of the whole or any part of the Software in such a way as to subject the whole or any part of the Software to an open source license or scheme in which there is or could be interpreted to be a requirement that as a condition or consequence of its use or distribution, the Software could be disclosed or distributed in source code form, licensed for the purpose of making derivative works or redistributable at no charge.

2.3 The Software shall be deemed to have been accepted by Ordering Activity on the earlier of:

2.3.1 30 days following delivery of the initial License Key (provided always that Ordering Activity (acting reasonably) has not already notified Blue Prism of any material non-conformity with the Documentation); or

2.3.2 any production use by Ordering Activity.

2.4 Ordering Activity shall be entitled to make such copies of the Software as are necessary for test, development, archive and backup purposes provided that Ordering Activity shall:

2.4.1 ensure that each copy shall include all copyright and proprietary notices included in the Software and on any media on which the Software is delivered to Ordering Activity;

2.4.2 keep a written record of the location and use of each such copy; and

2.4.3 provide a copy of such record to Blue Prism on request and allow Blue Prism to verify the same from time to time on request.

2.5 On the Commencement Date and on each anniversary of the Commencement Date thereafter, a new License Key will be required to activate the Software. For purposes of clarity, License Orders shall not renew automatically for additional terms and may be extended only through Ordering Activity’s issuance of a License Order modification or new License Order for terms beyond those included in the original License Order. The License Key is made available by Blue Prism.

2.6 Blue Prism reserves the right at any time to make any improvement, substitution or modification in the design, manufacture or configuration of the Software provided that any such improvement, substitution or modification shall not result in any material change in the functionality or performance of the Software.

2.7 Reserved.

2.8 Reserved.

2.9 If Ordering Activity wishes to install the Software on Ordering Activity-allotted servers within a third party hosting service (a “Hosting Service”), Blue Prism hereby consents to such use, provided that:

2.9.1 any act or omission of any such Hosting Service shall be deemed to be the act or omission of Ordering Activity;

2.9.2 any such performance and/or exercise shall be solely for the business purposes of Ordering Activity and not for the purpose of providing hosting, bureau or outsourced services to any third party; and

2.9.3 any claim from a Hosting Service shall be brought through Ordering Activity and the exclusions of and caps on liability detailed in this Agreement shall apply in aggregate to all claims brought by Ordering Activity and the Hosting Service.

2.10 If Ordering Activity’s security requirements included in the License Order are met, Blue Prism shall have the right during the term of this Agreement to audit and/or inspect Ordering Activity’s facilities and/or records to verify Ordering Activity’s use of the Software and compliance with this Agreement. Such audits shall be carried out on reasonable notice by Blue Prism and/or its selected external auditor. Ordering Activity shall provide Blue Prism and its audit team with access to its relevant records and facilities. Blue Prism shall comply with Ordering Activity’s standard security and health and safety policies notified in writing a reasonable time in advance of such visit, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Blue Prism will pay the expenses of the audit.

3 Confidentiality

3.1 Each party shall:
3.1.1 keep the other party’s Confidential Information confidential;  
3.1.2 not use the other party’s Confidential Information except for the purposes of this Agreement without the prior written consent of the other party; and  
3.1.3 not divulge the other party’s Confidential Information to any third party except for the purposes of this Agreement and shall procure that each such third party is aware of and complies with these obligations as to confidentiality.  

3.2 The provisions of Section 3.1 shall not apply to any Confidential Information that the Receiving Party can show:  
3.2.1 is in the public domain other than as a result of a breach of this Agreement or any other obligations of confidentiality;  
3.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;  
3.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or  
3.2.4 was developed independently of and without reference to any confidential information disclosed by the disclosing party.  

3.3 Nothing in this Section 3 shall prohibit Ordering Activity from disclosing Confidential Information, to the extent such disclosure is required under the Freedom of Information Act, 5 U.S.C. §552.

4 Provision of Support Services  
Blue Prism shall provide the Support Services in accordance with the Blue Prism Maintenance and Support Terms, a current version which is attached herein.

5 Intellectual Property  
5.1 Ordering Activity acknowledges and agrees that title to all portions of the Software, the Deliverables, the Blue Prism Confidential Information and the Intellectual Property Rights therein, including all derivative works, (“Blue Prism Elements”) are and remain owned by Blue Prism or its licensors. Blue Prism reserves all rights not otherwise expressly granted in this Agreement and no licenses are granted by implication, estoppel or otherwise. Ordering Activity agrees that it has no rights or claims of any type (other than the licenses granted under this Agreement) to the Blue Prism Elements and irrevocably waives and releases each and any claim to title and ownership rights thereto. The licenses granted hereunder do not entitle Ordering Activity to use the whole or any part of the Blue Prism Elements or Intellectual Property Rights therein as reference or inspiration for developing or creating any other product based upon them.

5.2 The Process Automations are owned by Ordering Activity. Blue Prism acknowledges and agrees that it has no rights or claims of any type to the Process Automations and irrevocably waives and releases each and any claim to title and ownership rights thereto. All rights in the Process Automations not expressly granted are reserved by Ordering Activity.

5.3 To the extent Ordering Activity provides to Blue Prism any suggestions, ideas, modifications, feedback, error identifications or other information related to the Software or to the use of the Software (“Feedback”), Ordering Activity hereby grants to Blue Prism a fully-paid up, irrevocable, perpetual, worldwide, nonexclusive license, with right to grant sublicenses, to use such Feedback to improve Blue Prism’s products and services and to use, reproduce, perform, display, make, sell and otherwise distribute such products and services. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost. Blue Prism acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

5.4 Nothing in this Section 5 shall prevent Blue Prism from developing and using any general knowledge, skills, experience, ideas, concepts, techniques or know-how (other than Confidential Information of Ordering Activity) that are acquired or used by Blue Prism during this Agreement.

5.5 Ordering Activity shall not delete or in any manner alter the copyright notices, trademarks, logos or related notices or other proprietary rights notices appearing on Blue Prism Elements.

6 Warranties  
6.1 Ordering Activity warrants that:  
6.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement; and  
6.1.2 it owns or has any license necessary to enable Blue Prism to use any third party materials and/or information provided by Ordering Activity under or in connection with this Agreement.

6.2 Blue Prism warrants that:  
6.2.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement;  
6.2.2 for a period of sixty (60) days after Acceptance, the Software, when working within the Environment, will, in all material respects have the functionality and performance set out in the Documentation;  
6.2.3 the Support Services shall be provided with reasonable skill and care; and  
6.2.4 it shall use its reasonable endeavors to provide the Support Services in accordance with the Service Levels; and  
6.2.5 it shall use reasonable endeavors to ensure that, as of the date of delivery, no virus, time bomb, trap door or other equipment or disabling device (other than a License Key) is introduced by it into the Software.

6.3 EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, BLUE PRISM EXCLUDES ALL WARRANTIES, CONDITIONS, TERMS, UNDERTAKING AND OBLIGATIONS IMPLIED BY STATUTE, COMMON LAW, CUSTOM, TRADE USAGE, COURSE OF DEALING OR OTHERWISE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. FOR THE AVOIDANCE OF DOUBT, BLUE PRISM DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE SHALL BE 100% UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED. BLUE PRISM DOES NOT WARRANT THAT THE SOFTWARE WILL MEET ORDERING ACTIVITY’S REQUIREMENTS. BLUE PRISM IS NOT OBLIGATED TO REMEDY ANY SOFTWARE ERROR THAT CANNOT BE REPRODUCED USING THE LATEST UPDATE OF THE SOFTWARE.

6.4 In the event of any breach of the warranties at Sections 6.2.2 or 6.2.5, Ordering Activity’s sole remedy shall be to require Blue Prism to correct the Software.

6.5 In the event of any breach of the warranties at Sections 6.2.3 and 6.2.4, Ordering Activity’s sole remedy shall be to require Blue Prism to re-perform the relevant Support Services.

7 Reserved

8 Term and Termination  
8.1 Reserved.

8.2 Each License Order will have its own duration (“Order Term”), which begins on the applicable Commencement Date for such License Order, and is subject to the terms of this Agreement.

8.3 Ordering Activity may opt to place future License Order through a different Reseller.

8.4 Without prejudice to any other right or remedy of Blue Prism and consistent with FAR 52.212-4 (l) Termination for the Government’s Convenience, and (m) Termination for Cause, termination shall be governed by the FAR 52.212-4 (l) Termination for the Government’s Convenience, and (m) Termination for Cause. The termination of an individual License Order will not terminate any other License Order or this Agreement unless otherwise specified in the written notice of termination.

8.5 Reserved.

8.6 Upon the termination or expiry of this Agreement for whatever reason:
8.6.1 Ordering Activity will immediately cause all copies of the Software to be removed from all computer equipment in its possession or under its control and return to Blue Prism or destroy (if authorized by Blue Prism in writing to do so) all such copies and any other Blue Prism Confidential Information and cause an officer of Ordering Activity to certify in writing that it has done so.

8.6.2 each party's rights, liabilities and obligations under this Agreement (including the License) shall cease, except that each party's rights, liabilities and obligations that have accrued prior to such termination or expiry or that are expressly or by implication intended to come into force upon or remain in force following such termination or expiry shall survive any such termination or expiry; and

8.6.3 any outstanding unpaid invoices rendered by Blue Prism shall be payable by Ordering Activity in accordance with this Agreement and invoices in respect of Fees and Expenses incurred prior to termination but for which an invoice has not been submitted shall be payable in accordance with this Agreement upon submission of an invoice therefor.

9 Reserved
10 Reserved
11 Dispute Resolution
This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference.

12 Export Controls and US Government Regulation
12.1 Ordering Activity understands that the Software is subject to export control laws and regulations. Ordering Activity may not download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with all United States, European Union, and other applicable laws and regulations.

12.2 The Software and ancillary services are commercial items as defined by the Federal Acquisition Regulation ("FAR") at FAR 2.101 and are licensed to the government under the applicable terms of FAR Part 12, “Acquisition of Commercial Items”, “Commercial computer software and commercial computer software documentation”. Any use, modification, reproduction, release, performance, display, or disclosure by the US Government shall be governed solely by, and prohibited, except as expressly permitted under, the terms of this Agreement.

13 General
13.1 Nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between the parties. Neither party shall be entitled to bind or pledge the credit of the other or sign any document, enter into any agreement or make any promise on behalf of the other or in any way indicate that it is entitled to do so without the prior written consent of the other.

13.2 Blue Prism shall be entitled to subcontract any of its obligations under this Agreement to a third party (with prior written consent) or to affiliates (without prior written consent) provided always that Blue Prism shall remain primarily responsible for the acts or omissions of such third party under this Agreement.

13.3 Ordering Activity and Blue Prism may not assign, transfer, mortgage, charge, sub-contract, sub-license or otherwise dispose of the whole or any part of this Agreement without the prior written consent of the other party.

13.4 Any notice or written communication given under or in relation to this Agreement shall be given in writing and shall be delivered by hand (in which case it shall be deemed to have been given at the time of delivery) or sent by special delivery post (in which case it shall be deemed to have been given on the second day after posting) to the other party at its address set out above or to such other address as it has previously notified to the sending party in writing, or by email (in which case it shall be deemed to have been given when sent, unless a mail non-delivery notification has been received by the sender).

13.5 Except as expressly stated in this Agreement, the remedies available to the parties under this Agreement shall not limit or exclude any other rights that either party may have against the other.

13.6 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

13.7 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.

13.8 No variation of or amendment to this Agreement shall be effective unless made in writing and signed by authorized representatives of the parties.

13.9 This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together will constitute one and the same instrument.

13.10 This Agreement shall be governed by and construed and interpreted in accordance with the Federal laws of the United States. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. To the maximum extent permitted by the governing law, no transactions called for herein shall be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction.

13.12 Reserved.
13.13 Reserved.
13.14 Reserved.
13.15 Reserved.

BLUE PRISM GLOBAL PRODUCT MAINTENANCE AND SUPPORT TERMS

1 SUPPORT SERVICES
Blue Prism provides Support Services in relation to Blue Prism Software. The elements included in the Support Services vary according to the Tier specified in the relevant Agreement. The table below specifies which Support Services are included in each Tier. All Support Services are provided in the English language and are performed as a remote service.

<table>
<thead>
<tr>
<th>Support Tier</th>
<th>Standard</th>
<th>Enterprise</th>
<th>Global Enterprise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Releases</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>Ability for Authorised Contacts to log Support Cases</td>
<td>Web portal only</td>
<td>Web portal, telephone and email</td>
<td>Web portal, telephone and email</td>
</tr>
</tbody>
</table>

2. DEFINITIONS
Terms defined in your End User License Agreement for Blue Prism Software have the same meaning when used in these Maintenance and Support Terms except where the context requires otherwise. The following defined terms shall apply to these Maintenance and Support Terms.

**Agreement**
The applicable End User License Agreement, SOW or other agreement under which Blue Prism agrees to provide Support Services.

**Authorised Contact**
Customer personnel who are authorised to log Support Cases with Blue Prism. To be nominated as an Authorised Contact a person must be familiar with the Blue Prism architecture and be capable of understanding the various components and terminology around the Blue Prism Software. They should also have sufficient system privileges to be able to implement any changes or recommendations given by Blue Prism Customer Service.

**Business Hours**
0900 to 1700 Monday to Friday in the Nominated Time Zone, excluding local public holidays.

**Error**
A failure of the Blue Prism Software, due to errors in the code, to perform in accordance with its Specification.

**Maintenance Releases**
New versions, major and minor releases, patches and updates of the Blue Prism Software.

**Nominated Time Zone**
The time zone specified in the Agreement.

**Other Support Case**
A Support Case that is not a P1 Case or P2 Case.

**P1 Case**
The entire Blue Prism Software is unavailable resulting in a critical impact on Customer’s business.

**P2 Case**
Operation of the Blue Prism Software is severely impacted having a critical business impact on multiple automations.

**Service Hours**
The period of time during which Blue Prism Support Services will be available and during which Target response Times and Target Resolution Times (if applicable) will be measured.

**Support Case**
A request for Blue Prism to provide Support Services in relation to a suspected Error.

**Target Response Time**
The period of time from receipt of a Support Case during which Blue Prism will use its reasonable endeavours to acknowledge the initial notification of the Support Case, communicate an incident reference number and allocate a priority level.

**Target Resolution Time**
The period of time from the point at which it is confirmed by Blue Prism that a Support Case is due to an Error during which Blue Prism will use its reasonable endeavours to provide a resolution to the Error. Any period of time during which Blue Prism is unable to progress the Support Case due to any delay in providing information or collaboration by Customer will be excluded from this time. The target resolution may be the provision of a suitable Work Around. Where appropriate Blue Prism will continue to work towards a permanent correction of the Error as soon as reasonably practicable, but measurement of the Target Resolution Time will cease at the point at which a Work Around has been provided.
3. ROLES AND RESPONSIBILITIES (ALL TIERS)
The Blue Prism Support Services are provided for the resolution of Errors in the Blue Prism Software. Customer should consider Blue Prism Support Services as part of its overall support requirements for other relevant types of support, which are not provided by Blue Prism and must be provided or procured by Customer.

<table>
<thead>
<tr>
<th>Scope of Support</th>
<th>Responsibility</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environment Support</td>
<td>Customer</td>
<td>The hardware, virtual machines, operating systems, hosted environment, network infrastructure and underlying applications that will be automated using Blue Prism. This includes ensuring that such environments meet Blue Prism’s minimum specified requirements.</td>
</tr>
<tr>
<td>Product Support</td>
<td>Blue Prism</td>
<td>Support Services provided by Blue Prism to resolve Errors in the Blue Prism Software as defined in these Maintenance and Support Terms.</td>
</tr>
<tr>
<td>Process Automations Support</td>
<td>Customer</td>
<td>Any Process Automations including custom objects that have been produced by or for the Customer for use with the Blue Prism Software.</td>
</tr>
</tbody>
</table>

When requesting Support Services Customer shall:
- log any Support Cases through Blue Prism’s support portal or (where included under the applicable support tier) by email or telephone, providing such information as may be required according to Blue Prism’s case logging procedure including detailed steps to describe and replicate the issue, details of investigations carried out, system event logs and process logs;
- permit Blue Prism at all reasonable times to access and use free of charge such of the Customer's personnel, premises, facilities and assistance as Blue Prism may reasonably require for the provision of the Support Services; and
- provide Blue Prism with such information as Blue Prism may reasonably require for the provision of the Support Services and ensure that all such information shall be provided in a timely manner and shall be complete and accurate.

4. EXCLUDED SERVICES
The following items are not included in the Support Services, and where Blue Prism agrees to provide any of them they will be chargeable according to the GSA Pricelist:
- all work undertaken outside the scope of Support Services as defined in these Maintenance and Support Terms (for example out-of-hours, onsite, provision of training in correct usage of Blue Prism Software); and
- Support Services provided in relation to any Error caused by:
  - o use of the Blue Prism Software otherwise than as permitted or contemplated by the Agreement;
  - o any modification of the Blue Prism Software by any person other than Blue Prism or a person authorised in writing by Blue Prism; o incorrect implementation or configuration of the Blue Prism Software (unless carried out by Blue Prism); o failure to implement any Maintenance Release supplied by Blue Prism to correct the Error;
  - o use of the Blue Prism Software with any software or hardware which could, in the reasonable opinion of Blue Prism, adversely affect the operation of the Blue Prism Software unless such use has been approved in writing in advance by Blue Prism; or
  - o any changes to the operating environment such as, but not limited to, changes to the database configuration.

5. MAINTENANCE RELEASES AND END OF LIFE PROCEDURE
Access to Maintenance Releases is included for all Support Tiers.

Blue Prism will provide notification on its customer portal at least 12 months in advance of withdrawal of Support Services for any version of Blue Prism Software. Blue Prism further undertakes that each version will be supported for a minimum of 3 years from its official release date, as specified in its release note.

Further details are provided in the End of Life Procedure document published by Blue Prism.
1. **Scope.** This Rider and the attached BMC Software Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3501 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   i) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
   
   u) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
   
   v) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
   
   w) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
   
   x) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
   
   y) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
   
   z) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   aa) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
   
   bb) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
   
   cc) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
   
   dd) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
   
   ee) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific Terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
   
   ff) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICE LIST INFORMATION AND TERMS

BMC SOFTWARE INC

BMC SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

BMC END USER LICENSE AGREEMENT

This Agreement ("Agreement") is between the entity or individual entering into this Agreement ("Customer") and the BMC Entity for the applicable Region where Customer acquired the License as described in Section 18 ("BMC").

1. GENERAL DEFINITIONS.

Affiliate is an entity that controls, is controlled by or shares common control with BMC or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

"Documentation" means the technical publications relating to the software, such as release notes, license entitlement descriptions, reference, user, installation, systems administrator and technical guidelines, included with the Product.

"Licensed Capacity" is the amount of each Product licensed as specified in the Order.

"Order" is an agreed written or electronic document, subject to the terms of this Agreement that identifies the Products to be licensed and the Licensed Capacity and sets forth the Support to be purchased and the fees to be paid.

"Product" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by BMC to Customer under Support.

"Support" is the support services program as further specified in this Agreement.

"Territory" means the country(ies) where Customer is licensed to install the Product as specified in the Order.

2. SCOPE. Licenses are granted, and Support is obtained, solely by execution of Orders. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise herein, and in the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will control only if the Order is agreed to by each party. Orders may be entered under this Agreement by and between (a) BMC or an Affiliate of BMC; and (b) the Customer or an Affiliate of Customer. With respect to an Order, the terms "BMC" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that Order, the Order will be considered a two party agreement between such entities, and BMC or its authorized reseller will separately invoice the Customer named in the Order for the associated License fees and Support fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by BMC and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether BMC acknowledges, accepts or fully or partially performs under such purchase order, BMC OBJECTS to any additional or different terms in the purchase order.

3. LICENSE. Subject to the terms, conditions, payment requirements and restrictions set forth in this Agreement, BMC grants Customer a non-exclusive, non-transferable, non-sub-licensable perpetual (unless a non-perpetual license is provided on an Order) license to install in the Territory, access and use the Product (i) up to the Licensed Capacity; (ii) for Customer’s and its Affiliates internal business operations, (iii) in accordance with the Documentation and the applicable Order, and (iv) make one copy of the Product for archival purposes only (collectively a "License"). Affiliates may use and access the Products and Support under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

4. RESTRICTIONS. Customer will not: (a) copy, operate or use any Product in excess of the applicable Licensed Capacity or other than as set forth in the License above; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices from any Product, or copy or partial copy of a Product; (c) disassemble or reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (d) distribute, rent, lease, sublicense or provide the Product to any third party; (e) use the Products in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the products to be used by an outsourcing or service bureau provider on Customer’s behalf; (f) provide a third party with the results of any functional evaluation, or performance tests, without BMC’s prior written approval; or (g) attempt to disable or circumvent any of the licensing mechanisms within the Product.

5. PRODUCT PERFORMANCE WARRANTY. BMC warrants that (a) the Product will perform in substantial accordance with its Documentation for a period of one year from the date of the first Order, (b) BMC has used commercially reasonable efforts consistent with industry standards to scan for and remove software viruses, and (c) other than passwords that may be required for the operation of the Product, BMC has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation of the Product in accordance with the License. This warranty will not apply to any problems caused by hardware, Computers, or software other than the Product, or misuse of the Product, use of the Product other than as provided by the applicable License, modification of the Product, or claims made either outside the warranty period or not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, Product provided pursuant to Support or Product provided pursuant to Section 12.

6. LIMITED REMEDIES. BMC’s entire liability, and Customer’s exclusive remedy, for breach of the above warranty is limited to: BMC’s use of commercially reasonable efforts to have the Product perform in substantial accordance with its Documentation, or replacement of the non-conforming Product within a reasonable period of time, or if BMC cannot have the Product perform in substantial accordance with its Documentation replace the Product within such time period, then BMC will refund the amount paid by Customer for the License for that Product. Customer’s rights and BMC’s obligations in this Section are conditioned upon Customer’s providing BMC during the warranty period (a) full cooperation and access to the Product in resolving any claim; and (b) written notice addressed to the BMC Legal Department that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in BMC’s development or support environment, and a specific reference to the Documentation to which such alleged defects are contrary.

7. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE PRODUCT IS PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BMC DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.

8. SUPPORT. Customer may acquire BMC support services ("Support") on an Order for the total Licensed Capacity of a Product. Once Support is acquired for a Product, Customer is automatically enrolled in Support on an annual basis for all Licensed Capacity of that Product, unless either party terminates Support on all Licensed Capacity of a Product upon at least 30 days written notice prior to the next Support anniversary date. The annual fee for Support will be agreed upon at the time of each Order. A further description of Support is located at www.bmc.com/support-review-policies, and is incorporated herein by this reference. BMC may change its Support terms to be effective upon Customer’s support anniversary date. BMC reserves the right to discontinue Support for a Product where BMC generally discontinues such services to all licensees of that Product. If Customer terminates Support and then re-enrolls in Support, BMC may charge Customer a reinstatement fee.

9. PAYMENT DELIVERY AND TAXES. If Customer is purchasing directly from BMC, Customer will pay each License fee and/or Support fee upon receipt of invoice. Customer will pay, or reimburse, for any perpetual licenses, issue a refund based upon the applicable line item fees paid, provided all applicable taxes, duties, and fees are remitted. If Customer requests that BMC invoice third parties on Customer's behalf, Customer will pay BMC the applicable invoice amount plus applicable taxes, duties, and fees. If Customer is purchasing from a reseller of BMC's products, Customer will pay the reseller in accordance with the terms and conditions of purchase set forth in the purchase order. If BMC's legal department does not receive prompt, detailed written notice of the Infringement Claim from Customer, (b) BMC is not able to retain sole control of the defense of the Infringement Claim and all negotiations for its settlement or compromise, (c) BMC does not receive all reasonable assistance, or (d) the Infringement Claim is based on (i) the use of Product in combination with products not approved by BMC in the Product's Documentation, (ii) the failure of Customer to use any updates to such Product within a reasonable time after such updates are made available to Customer, or (iii) the failure of Customer to use the Product as permitted by the Order and in accordance with the Documentation. BMC will not bind Customer to a monetary obligation in a settlement or compromise, or make an admission on behalf of Customer, without obtaining Customer’s prior consent. If BMC determines in BMC’s reasonable discretion that use of the Product should be stopped because of an Infringement Claim or potential Infringement Claim, if a court of competent jurisdiction enjoins Customer from using a Product as a result of an Infringement Claim and BMC is unable to have such injunction stayed or overturned, or if BMC settles an Infringement Claim on terms that require Customer to stop using the Product, then BMC will, at its expense and election: (a) modify or replace the Product, (b) procure the right to continue using the Product, or (c) if in BMC’s reasonable judgment, neither (a) nor (b) is commercially reasonable, terminate Customer’s License to the Product and (i) for any perpetual licenses, issue a refund based upon the applicable license fees paid, prorated over 48 months from the date of the Order under which the Products were initially licensed; and (ii) for any non-perpetual licenses, release Customer from its obligation to make future payments for the Product or issue a pro rata refund for any fees paid in advance. This Section contains Customer’s exclusive remedies and BMC’s sole liability for Infringement Claims.

13. INFRINGEMENT CLAIMS. If a third party asserts a claim against Customer asserting that Customer’s use of a Product in accordance with this Agreement violates that third-party’s patent, trade secret or copyright rights (“Infringement Claim”), then BMC will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer based on infringement by the Product. BMC’s obligations under this Section will not apply if: (a) BMC’s legal department does not receive prompt, detailed written notice of the Infringement Claim from Customer; (b) BMC is not able to retain sole control of the defense of the Infringement Claim and all negotiations for its settlement or compromise, (c) BMC does not receive all reasonable assistance, or (d) the Infringement Claim is based on (i) the use of Product in combination with products not approved by BMC in the Product's Documentation, (ii) the failure of Customer to use any updates to such Product within a reasonable time after such updates are made available to Customer, or (iii) the failure of Customer to use the Product as permitted by the Order and in accordance with the Documentation. BMC will not bind Customer to a monetary obligation in a settlement or compromise, or make an admission on behalf of Customer, without obtaining Customer’s prior consent. If BMC determines in BMC’s reasonable discretion that use of the Product should be stopped because of an Infringement Claim or potential Infringement Claim, if a court of competent jurisdiction enjoins Customer from using a Product as a result of an Infringement Claim and BMC is unable to have such injunction stayed or overturned, or if BMC settles an Infringement Claim on terms that require Customer to stop using the Product, then BMC will, at its expense and election: (a) modify or replace the Product, (b) procure the right to continue using the Product, or (c) if in BMC’s reasonable judgment, neither (a) nor (b) is commercially reasonable, terminate Customer’s License to the Product and (i) for any perpetual licenses, issue a refund based upon the applicable license fees paid, prorated over 48 months from the date of the Order under which the Products were initially licensed; and (ii) for any non-perpetual licenses, release Customer from its obligation to make future payments for the Product or issue a pro rata refund for any fees paid in advance. This Section contains Customer’s exclusive remedies and BMC’s sole liability for Infringement Claims.

14. TERMINATION. Upon thirty days advance written notice, either party may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on Orders placed prior to its effective date and such Orders will remain in full force and effect under the terms of this Agreement. BMC may: (i) terminate an Order and the Licenses to the Products on that Order if Customer fails to pay any applicable fees due under that Order within 30 days after receipt of written notice from BMC of non-payment; (ii) terminate any or all Orders, Licenses to the Products and/or this Agreement, without notice or cure period, if Customer violates the intellectual property rights of BMC, its Affiliates or licensors, or uses the Products outside of the scope of the applicable license(s). Before any termination by either party, the non-breaching party may, at its option, require: (i) correction of the breach within 30 days of receipt of written notice from the breaching party; (ii) payment of all amounts due under this Agreement; (iii) cease further use of the Products and return, at the breaching party’s option, the Product in its original condition together with all related Documentation and copies, or certify its destruction in writing;
15. **AUDIT.** If requested by BMC, and not more than once a year, Customer agrees to deliver to BMC, within 30 days of such request, as specified by BMC either (i) periodic product usage reports generated from specific products or (ii) written periodic product usage reports, to be provided solely when the product does not generate reports. Additionally, if requested by BMC not more than once a year, Customer agrees to allow BMC to perform an audit at the locations where the Products are installed, during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to its information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product, Customer agrees to pay the applicable fees for additional capacity upon receipt of invoice. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Product, then Customer agrees to also pay BMC’s reasonable costs of conducting the audit.

16. **CONTROL PORTS.** Customer represents and warrants that it: a) will comply with the United States Export Administration Regulations and other U.S. or foreign export regulations; b) no individual accessing or using the Product is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Product under such regulations; d) will not use the Product in contradiction to such regulations; and f) will not use the Product for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Product exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that this Product is intended for civil purposes only. Therefore, Customer agrees to comply with both the U.S. regulations and those E.U. regulations and will not export in violation of the regulations and without all proper licenses. Any failure to comply with these regulations will result in Customer forfeiting all rights to the Product.

17. **GOVERNING LAW AND DISPUTE RESOLUTION.** A party will provide written notice to the other party of any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof (“Controversy”). The parties shall engage in good faith negotiations to resolve the Controversy. Only if the Controversy is not resolved through good faith negotiations within 15 days of the sending of the written notice of Controversy, the Controversy may be submitted to litigation or binding arbitration, based on the place of incorporation of the parties, as follows: (i) If both parties to this Agreement are entities incorporated under the law of the United States, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both sides hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens. (ii) If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the arbitration shall be held in Amsterdam, Netherlands under the then-applicable rules of the International Chamber of Commerce and the substantive laws of the Netherlands will govern. (iii) If both parties to this Agreement are entities incorporated in countries in the Asia Pacific region, the arbitration shall be held in Singapore under the then-applicable rules of the Singapore International Arbitration Centre and the substantive laws of Singapore will govern. (iv) In all other instances, the arbitration shall be held in New York City, New York, under the then-applicable international rules of the American Arbitration Association and the substantive laws of the State of Texas will govern. For all arbitrations conducted hereunder: (a) the arbitration shall be conducted in English; (b) the relevant arbitral institution shall determine the number of arbitrators, but any controversy in which the amount in dispute is greater than $10 million USD shall be decided by three arbitrators, with each party having the right to select one arbitrator; (c) the costs of such arbitration shall be borne equally, pending the arbitrator’s award; (d) the arbitration award rendered shall be final and binding on the parties, shall not be subject to appeal to any court and shall be enforceable in any court having jurisdiction over the Parties; (e) the arbitration proceedings, award and pleadings shall all be confidential, unless disclosure of particular information is required for purposes of enforcing/challenging the award or to meet local securities law requirements; and (f) the party prevailing in arbitration shall be entitled to recover its reasonable attorneys’ fees and the necessary costs incurred in connection with the arbitration.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Nothing in this Agreement shall be deemed as preventing either party from seeking immediate injunctive relief from any court having jurisdiction over the parties and the subject matter of the dispute.

18. **LICENSEES.** The following licensing entities apply to this Agreement:

<table>
<thead>
<tr>
<th>Region</th>
<th>Licensing Entity</th>
<th>Address of Licensing Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States and Latin America South (not a specified Central or South America country below)</td>
<td>BMC Software, Inc.</td>
<td>2103 City/West Boulevard, Houston, Texas 77042</td>
</tr>
<tr>
<td>Canada</td>
<td>BMC Software Canada Inc.</td>
<td>50 Minthorn Boulevard, Suite 200 Markham, Ontario L3T 7X8 Canada</td>
</tr>
<tr>
<td>EMEA (Europe, Middle East and Africa)</td>
<td>BMC Software Distribution B.V.</td>
<td>Boeing Avenue 245, 1119 PD Schiphol Rijk, The Netherlands</td>
</tr>
<tr>
<td>Brazil</td>
<td>BMC Software do Brasil Ltda.</td>
<td>Av. das Nações Unidas, 8.501 – 22º Andar Condomínio Eldorado Business Tower São Paulo, Brazil – 05425-070</td>
</tr>
<tr>
<td>Mexico</td>
<td>BMC Software Distribution de México, S.A. de C.V.</td>
<td>Torre Esmeralda II Blvd. Manuel Avila, Camacho #36, Piso 23 Lomas de Chapultepec, CP11000, México D.F.</td>
</tr>
<tr>
<td>Argentina</td>
<td>BMC Software de Argentina S.A.</td>
<td>Ing. Butty 220 – Piso 18, Buenos Aires, República Argentina, C1001AFB</td>
</tr>
<tr>
<td>S.E.A (Southeast Asia), Australia, New Zealand, Hong Kong, Taiwan</td>
<td>BMC Software Asia Pacific Pte Ltd</td>
<td>600 North Bridge Road, #20-01/10 Parkview Square, Singapore 186778</td>
</tr>
<tr>
<td>China</td>
<td>BMC Software (China) Limited</td>
<td>Room 502, Level 5, Tower W1, The Towers, Oriental Plaza, No. 1 East Chang An Ave., Dong Cheng Dist., Beijing 100738, China</td>
</tr>
<tr>
<td>Japan</td>
<td>BMC Software K.K.</td>
<td>Harmony Tower 24th Floor, 1–32–2 Honcho, Nakano-ku, Tokyo, 179-8721</td>
</tr>
<tr>
<td>Korea</td>
<td>BMC Software Korea Ltd</td>
<td>24F Fl., ASEM Tower, , 1517, Yeongdong-dao, Gangnam-gu, Seoul 135-798, Korea South</td>
</tr>
</tbody>
</table>

19. **ASSIGNMENT AND TRANSFERS.** Customer may not assign or transfer a Product separate from the applicable Agreement and License, and may not assign or transfer an Agreement or a License, except in the event of a merger with or into, or a transfer of all or substantially all of Customer’s assets to, a third party who assumes all of Customer’s liabilities and obligations under the Agreement and License, and expressly agrees in writing to be bound by and comply with all of the terms of the Agreement and License. Except as specifically authorized by writing, any attempt to assign or transfer an Agreement or License in violation of this provision will be null and void and be treated as a violation of BMC’s intellectual property rights or use outside the scope of the License.

20. **DATA PROTECTION.** Data Protection. (a) Customer acknowledges that BMC neither requires nor needs Customer to: (i) send BMC any personal data collected by Customer (“Customer Collected Data”) or (ii) give BMC access to any Customer Collected Data. Consequently, Customer remains responsible for either filtering, making anonymous, encrypting such Customer Collected Data or for having proper procedures in place to prevent Customer Collected Data from being sent to or accessed by BMC. (b) In the course of normal business, BMC may collect and process personal information related to the Customer (mainly contact and related information) in order to perform its obligations under this Agreement and/or under an Order, such information being...
referred to hereinafter as “Customer Contact Information”. Where the Customer Contact Information is to be processed by BMC, BMC will comply with its Controlled Corporate Rules Policy found at http://media.cms.bmc.com/documents/External+Privacy+Binding+Corporate+Rules+Policy+Aug+04.pdf (the “BCR”) with respect to compliance with data protection laws and/or regulations. The BCR policy is incorporated into a BMC corporate wide policy, requiring all BMC employees, employees and third party providers to comply with and respect the BCR policy which is governing the collection, use, access, storage and transfer of personal data among BMC entities and third-party sub-processors. The details of the BCR approval of BMC Software are available at http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr-cooperation/index_en.htm. BMC shall in particular: (i) allow Customer to access, modify, correct or erase Customer Contact Information when necessary; (ii) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Customer Contact Information and to prevent its unauthorized access, use, or disclosure; and (iii) refrain from using Customer Contact Information for any other purpose than performing its obligations under this Agreement and/or any Order.

21. MISCELLANEOUS TERMS. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements between the parties relating to the subject matter of this Agreement. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. Any delay or failure of any party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, storms or natural disasters, emergency, or other causes beyond the reasonable control of the party, will not be deemed a breach of this Agreement; provided, however, this provision does not apply to the payment of monies or any breach of Section 10. Customer agrees that BMC and its affiliates may refer to Customer as a customer of BMC, both internally and in externally published media. The BMC Products may maintain third party software which is delivered to Customer as part of the Product and may not be taken out of the Product or used separately from the Product and for which additional terms may be included in the Documentation. The Product may contain hyperlinks to websites controlled by parties other than BMC. BMC is not responsible for and does not endorse the content or accept any responsibility for Customer’s use of these websites. Customer should refer to the policies posted by other websites regarding data privacy and other topics before using them. Any additional documents presented to a BMC representative by Customer for signature as a condition for going on a Customer’s site will be governed by this Agreement and to the extent that such document presents additional terms or conflicts with this Agreement, it shall be considered null and void.

22. U.S. FEDERAL ACQUISITIONS. This Section applies only to acquisitions of the commercial Product and Documentation subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States Government. In the event the Products are delivered to the United States Government, the United States Government hereby agrees that the Products qualify as “commercial items” within the meaning of the Federal Acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the United States Government’s use and disclosure of the Products and shall supersede any conflicting contractual terms and conditions. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): “Restricted Rights – Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988).”

23. ADDITIONAL TERMS. The following additional terms are incorporated into this Agreement.

a. DEFINITIONS. Terms set forth below have the indicated meaning regardless of whether they are capitalized.  
   • ‘Client’ means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.
   • ‘Cloud Environment’ means a shared pool of configurable computing resources (e.g., networks, servers, storage, applications and services) managed so that the computing resources are pooled; resources are not allotted to a single entity and are shared dynamically with multiple entities.
   • ‘Cloud Service Provider’ is an entity that provides Cloud Services to Clients under agreements pursuant to transactions for which the Cloud Service Provider is compensated.
   • ‘Cloud Services’ means the dynamic provisioning of IT resources as a service, where typically the Cloud infrastructure is shared across multiple tenants, and tenants are billed on a utility/subscription basis for what they use. Examples of Cloud Services include Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS).
   • ‘Computer’ or “Server” has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines. For purposes of distributed systems machines a Computer or Server may be physical or virtual.  
   • ‘Enterprise’ is the environment consisting of all hardware owned or leased by a Customer or by a Client respectively, in the Territory.
   • ‘License Add-on:’ Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

b. LICENSE RESTRICTIONS. The following restrictions apply to certain Products.

24. AppSight Products – License Add-on:  
   • BMC AppSight Initial Platform (“AppSight System”) may only be used to support a Customer’s own applications according to the AppSight System configuration licensed for. For this purpose, Customer’s “own” applications are those of which Customer is the ultimate beneficiary or applications developed by Customer as an independent software vendor. Each AppSight System may only be used with the platform designated on the Product Table (Windows/ Net or J2EE) unless a BMC AppSight Additional Platform is licensed for the AppSight System which enables the AppSight System to be used with an additional platform. Each AppSight System may only be used for the Workflow designated on the Product Order Form unless a BMC AppSight Additional Platform is licensed for that AppSight System for an additional Workflow.  
   • BMC AppSight Named User is a license to use the full BMC AppSight System. Customer must provide the domain ID or email ID for each named user. Once designated, the BMC AppSight Named User may only be changed if the individual leaves the Customer or the Team, Group or Division under subscribed. BMC AppSight Named Users may not be transferred from one AppSight System to another.  
   • BMC AppSight QA User is a license to use the AppSight Test Recorder module of the AppSight System.
   • BMC AppSight Level 1 Viewer is a license to use limited-functions of AppSight System that provides a user with the ability to view and replay the visual recording of a Black Box log. The AppSight Level 1 Viewer may be used by the named users provided to BMC.
   • BMC AppSight for Citrix Support User is a license to use the AppSight System for Citrix application support. Only licensed BMC AppSight for Citrix users may use the AppSight System for Citrix support.
   • BMC AppSight Connector for Defect/Incident Tracking may only be used to interface the AppSight System to Customer’s defect/incident tracking application.
   • BMC Desktop Capture, Customer must provide the domain ID or email ID for each named user. The BMC Desktop Capture Player may be used by licensed named users to play back and view BMC Desktop Capture incident recordings. Once designated, a named user may only be changed if the individual leaves the Customer or the Team, Group or Division under subscribed. BMC Desktop Capture and BMC Application Problem Resolution Products.
**License Key.** The Product may require a software license key that limits usage to that provided under the terms of the Agreement and this Product Order Form. Licenses must install and run license manager software provided with the Product at no additional cost. All AppSite Console must be connected to the license manager.

**AppSite Black Box** is the agent portion of the AppSite System. All AppSite Systems include unlimited AppSite Black Boxes which may be installed on any computers of Customer's or Customer's customers. Customer may provide Customer’s customers the limited right to install and to use on behalf of Customer the AppSite Black Boxes (but not any other components of the AppSite System) but only for the sole purpose of providing information, runbooks, and tools to Customer to support Customer’s own software applications, and in no event to support Customer’s own internal software applications.

**Embedded Black Box.** Customer may incorporate the AppSite Black Box into a Customer application, in which case, in addition to the licenses granted above, Customer is hereby granted a worldwide, nonexclusive, perpetual license to (a) incorporate the modified unaltered object code version of the AppSite Black Box into Customer’s designated application (“Customer Application”); (b) reproduce and distribute the AppSite Black Box as incorporated into the Customer Application; and (c) to use in unaltered form the BMC trademarks, service marks or marketing logos (the “BMC Trademarks”) solely to promote the Customer Application, provided Customer obtains BMC’s prior written approval for each new usage. Customer shall ensure that any Customer Application incorporating the AppSite Black Box shall be governed by a license agreement which is at least as protective of BMC’s proprietary rights in the AppSite Black Box as of Customer’s proprietary rights in the Customer Application, but no less protective than this Agreement, including rights and restrictions related to end user's right to make backup and archival copies. In the event Customer incorporates the Black Box into Customer’s Application, Customer shall include in the startup screen, help and/or the About screen in the Customer Application, BMC's logo and the following, “POWERED BY BMC’S APPSIGHT BLACK BOX TECHNOLOGY.” Furthermore, Customer shall visually display the BMC name and the BMC product names and trademarks in the documentation for the Customer Application incorporating the AppSite Black Box, on Customer’s website and in advertising and promotional materials.

**BMC Atrium Orchestrator – Adapters License Add-on.** Restricts license rights to deploy one unique adapter for every unit licensed; also includes unlimited deployment rights to use Light Weight Activity Peers in combination with licensed adapters; test and development license are provided at no additional cost.

- **Adapter** - a system/interfaces/gateways/connections used to talk to external applications.
- **Light Weight Activity Peer** - Slave peers/ servers that can optionally be added to a grid to accommodate network latencies and/or security requirements. Typically deployed in combination with adapters; these peers do not directly add incremental processing power.

**BMC Atrium Orchestrator Automation Pack – Device Endpoint License Add-on.** Restricts license rights to up to five (5) peers in the orchestration environment; and allows of the following runbooks (Continuous Compliance for Network Automation and NetApp Solutions) and supporting base adapters only for the Licensed Capacity.

**BMC Atrium Orchestrator Automation Pack – Server Endpoint License Add-on.** Restricts license rights to up to five (5) peers in the orchestration environment; and allows of the following runbooks (Continuous Compliance for Server Automation, Discovery Synch, and NetApp Solutions) and supporting base adapters only for the Licensed Capacity.

**BMC Atrium Orchestrator – Peer License Add-on.** Restricts license rights to deploy one peer for every unit licensed; a peer can either be a Configuration Distribution Peer or an Application Peer; test and development license are provided at no additional cost.

- **Application Peer** – Server that executes workflows.
- **Configuration Distribution Peer** – Master application that controls all workflows, including load balancing across the grid of Peers.

**BMC Atrium Orchestrator Service Desk Automation Desktop Automation Pack – User License Add-on.** The Product excludes the use of any other BMC developed runbook besides Service Desk Automation and product components (peers, base adapters, and application adapters) for other use cases including but not limited to event triage and remediation where an event management solution, such as BMC TrueSight Operations Management or other third party tool, is the generator of incidents, or closed loop compliance use cases where change requests are generated by a configuration management solution, such as BMC. See the documentation of other third party tool.

**BMC BladeLogic Application Release Automation.** Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

**BMC BladeLogic Suite – Base License.**

- Excludes use of the Threat Director capabilities in BladeLogic Portal except for the first 100 enrolled server endpoints.
- Excludes use of BMC Atrium Orchestrator as follows:
  - BMC Atrium Orchestrator Content – The use of any workflow or runbook content other than Management and Utility actions found in the Operations Management module. Excludes the use of any base adapter. Excludes the use of any non-BMC product application adapter.
  - BMC Atrium Orchestrator Platform – The use of additional licensed capacity other than what is listed here: 1 peer, 3 Development Studio named user licenses, and 5 Development Studio user licenses. This entitlement is a 1-time grant across all BMC products that include this access and rights are not cumulative.

**BMC TrueSight Operations Management – Base License or BMC ProactiveNet Performance Management Suite – Base License.**

- Excludes use of BMC Atrium Orchestrator as follows:
  - BMC Atrium Orchestrator Content – The use of any workflow or runbook content other than Management and Utility actions found in the Operations Management module. Excludes the use of any base adapter. Excludes the use of any non-BMC product application adapter.
  - BMC Atrium Orchestrator Platform – The use of additional licensed capacity other than what is listed here: 1 peer, 3 Development Studio named user licenses, and 5 Development Studio user licenses. This entitlement is a 1-time grant across all BMC products that include this access and rights are not cumulative.

**BMC Remedy IT Service Management.**

- Excludes use of BMC Atrium Orchestrator as follows:
  - BMC Atrium Orchestrator Content – The use of any workflow or runbook content other than Management and Utility actions found in the Operations Management module. Excludes the use of any base adapter. Excludes the use of any non-BMC product application adapter.
  - BMC Atrium Orchestrator Platform – The use of additional licensed capacity other than what is listed here: 1 peer, 3 Development Studio named user licenses, and 5 Development Studio user licenses. This entitlement is a 1-time grant across all BMC products that include this access and rights are not cumulative.

**BMC BladeLogic Database Automation.** Excludes the use of the BMC Database Automation agent for multiple operations. Once the agent is registered within the console and a job has been executed against the target, the Product license has been consumed.

**BMC BladeLogic Server Automation – Compliance Module.** Excludes use of BMC BladeLogic agent for server configuration, patching, and provisioning tasks.

**BMC BladeLogic Server Automation – Configuration Module.** Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC BladeLogic Server Automation – Provisioning Module.** Excludes use of BMC BladeLogic agent for server configuration, patching, remediation, and provisioning tasks.

**BMC BladeLogic Server Automation Suite.** Excludes the use of BMC BladeLogic agent for the application packaging and deployment of internally built, pre-integrated, and developed code.

**BMC Capacity Management for Mainframes.** Any BMC Capacity Management for Mainframes Product and/or any BMC Performance Analyzer for Mainframes, BMC Performance Predictor for Mainframes, BMC Performance Perceiver for Mainframes, BMC Performance Analyzer for Mainframe...
Applications and other related products that may be released as part of the BMC Capacity Management for Mainframes must be licensed for all environments for which the Product or one of its components will process data or execute functionality on behalf of, regardless of whether the Product or one of its components is specifically installed on that Computer. The Products may be installed on or moved to any Computer(s) included in the licensed environment.

**BMC Capacity Management Products:** Any BMC Capacity Management product for distributed systems environments can be reinstalled over time from one Computer to another provided that no data related to the first Computer remains stored in the Capacity Management Product repositories.

**BMC Cloud Lifecycle Management – Core License Add-on (“CLM Core”):**
- The Product may only be used in a Cloud Environment.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC Atrium Orchestrator for the Licensed Capacity, only in order to deliver the process orchestration use cases that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities or product components, including, but not limited to peers, adapters, and runbook content.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The Product includes the right to use BMC TrueSight Capacity Optimizer for Servers for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC TrueSight Capacity Optimization, including but not limited to, the use of BMC TrueSight Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

**BMC Cloud Lifecycle Management – Foundation Standard Pack License Add-on (“CLM Foundation”):**
- The Product may only be used in a Cloud Environment.
- If Customer is also a Cloud Service Provider then Product cannot be used by the Cloud Service Provider for other environments, including but not limited to the Cloud Service Provider’s internal IT environment, or System Integration activities for Clients which are not part of Cloud Services. The Product may not be installed on Client premises or accessed or used directly by Clients.
- The Product includes expanded license rights for BMC Atrium Orchestrator including unlimited peer licenses, use of all generally available Base Adapters, and Development Studio and Operator Control Panel user licenses to support the Licensed Capacity. The Product does not include the right to use any other Application Adapters or Runbook content.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The Product includes the right to use BMC BladeLogic Server Automation (BBSA) for Server Provisioning and Software Deployment functionality only. The Product does not include the right to use any other functionality of BBSA, including, but not limited to, patching, compliance, application release automation, configuration management, discovery, inventory, and nsh-scripting.
- The Product includes the right to use BMC Remedy Service Request Management functionality of the BMC Remedy ITSM product. The Product includes the right to use BMC Remedy Service Request Management for any number of users, to support any service requests that are directly related to the delivery or consumption of Cloud Services, for the Licensed Capacity.
- The Product includes the right to BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The Product includes the right to use BMC TrueSight Capacity Optimizer for Servers for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC TrueSight Capacity Optimization, including but not limited to, the use of BMC TrueSight Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

**License Restriction for BMC TrueSight Synthetic Monitor with Borland Silk Performer:** The BMC TrueSight Synthetic Monitor with Borland Silk Performer product may only be used with BMC performance management products and BMC application performance management products.

**Desktop/Mobile Management Product Restrictions for BMC Configuration Management Products:** Each “Desktop/Mobile Management” License is limited for use with one Client Endpoint. “Client Endpoint” means a laptop, desktop or other non-Server Computer.

- **Desktop/Mobile Patch Management Restriction:** A “Desktop/Mobile Patch Management” License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one Client Endpoint.
- **Desktop/Mobile Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Desktop/Mobile Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one Licensed Client Endpoint, unless Customer has separately licensed the...
Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of any license for any other purpose.

- **BMC Configuration Management Desktop OS Management Restriction**: A "BMC CM Desktop OS Management" License may only be used to manage operating system migration activities on one Client Endpoint. Each BMC CM Desktop OS Management License: (a) may only be used on a licensed Client Endpoint that is licensed for use with both a Desktop/Mobile Application Management License and a Desktop/Mobile Configuration Discovery License; and (b) may not be redeployed or harvested to a different Client Endpoint.

- **Extended Application Management Restriction**: An "Extranet Application Management" License may only be used on one Client Endpoint. The parties must mutually agree on the name of each Single Application and its primary function at the time of Order. Single Application is defined as a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

- **Server Management Product Restrictions for BMC Configuration Management Products**: Each "Server Management License" is limited for use per machine, not per concurrent user. Each "Server Management License" may only be used by Administrators for the project for which it was licensed. An Administrator is defined as an employee with access to or the right to use the administrative components of the Product.

- **BMC Configuration Management Control Center Module Restriction for BMC Configuration Management Products**: Each "BMC CM Control Center License" may only be used by Administrators for the project for which it was licensed. An Administrator is defined as an employee with access to or the right to use the administrative components of the Product.

- **BMC Configuration Management Developers Kit Definition and Restriction for BMC Configuration Management Products**: A "BMC Developers Kit" license allows Customer to embed the "SDK Run Time Code" in an unmodified object code form, into a single software application developed by Customer to create an "SDK Client. " "SDK Run Time Code" means the unmodified object code files in the BMC CM Product that are designated as redistributable. "SDK Client" means a software technology with a principal purpose and functionality substantially different than that of the SDK Run Time Code and that uses only a BMC Desktop/Mobile Management Product, a BMC Device Management Product and/or a BMC Server Management Product, as applicable, to invoke the update functionality of the SDK Run Time Code. An SDK Client may only be used on, or distributed to, licensed Endpoints that are licensed separately by Customer, which licensed Endpoints may be within or outside of Customer’s organization. "Server Endpoint" means a laptop, desktop or other non-Server Computer. "Device Endpoint" means a personal digital assistant or similar computing device. "Endpoint" means a Client Endpoint, a Device Endpoint, a Server Endpoint, or Other Endpoint, as the case may be. "Other Endpoint" means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. "Server Endpoint" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

- **Device Management Product Restriction for BMC Configuration Management Products**: Each "Device Management License" is limited for use with one Client Endpoint. A "Device Management License" may only be used by Administrators for the project for which it was licensed. An Administrator is defined as an employee with access to or the right to use the administrative components of the Product.

- **Server Management Product Restrictions**: Each "Server Management License" is limited for use per CPU – Subcapacity.

  - **Server Patch Management Restriction**: A "Server Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches per CPU – Subcapacity.

  - **Server Configuration Management Pack Restriction**: The Desktop/mobile Application Management Product and the Desktop/mobile Configuration Discovery Product that are shipped with the Server Patch Management License may only be used to manage, deploy, update and inventory anti-virus software and security patches licensed Server Endpoints, unless Customer has separately licensed the Desktop/mobile Application Management Product and the Desktop/mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose. With respect to the above Server Management Licenses, Customer must comply with any restrictions designated at the time of Order on the maximum number of CPUs that may be included in each Server Endpoint. "Server Endpoint" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

- **CONTROL-M/Assist**: Control-M/Assist may only be used to interface with the third party scheduler and may not be used to schedule or manage batch processes outside of the cross-scheduler dependencies.

- **Control-M Self Service Mobile Integration Kit**: The Control-M Self Service Mobile Integration Kit is governed by the terms and conditions of the license agreement provided with the product.

- **BMC Database Automation – License Add-on**: Excludes the use of the BMC Database Automation agent for multiple operations. Once the agent is registered within the console and a job has been executed against the target, the Product license has been consumed.

- **BMC Decision Support – Database Automation (5 Viewer/Query Licenses)**: Excludes use of Report Authoring module which must be licensed separately.

- **BMC Decision Support – Network Automation (5 Viewer/Query Licenses)**: Excludes use of Report Authoring module which must be licensed separately.

- **BMC Decision Support – Server Automation (5 Viewer, 1 Query License)**: Excludes use of Report Authoring module which must be licensed separately.

- **BMC FootPrints Service Core 5 Named User BASE Software Package**: May be used with no more than three workspaces per instance and by no more than 15 named users.

- **BMC HR Case Management**: The license enables the customer to use up to 300 Named MyIT Self Service users for each BMC HR Case Management licensed named user and up to 750 Named MyIT Self Service users for each BMC HR Case Management licensed concurrent user.

- **BMC Identity Products**: Internal User: If a Product name includes the term "Internal User," that Product can only be used by Customer’s employees (full time and part time) and contractors whose information is being managed using the BMC IDM tools. Information on these users will typically be found in the HR database.

  External User: If a Product name includes the term "External User," that Product can only be used by Customer’s business partners and customers/ prospects whose information is being managed using the BMC IDM tools or Customer’s employees (full or part time) contractors who are licensed to use one or more of the following BMC Identity Management Tools: (1) BMC Identity User Administration (2) BMC Identity Password Management (3) BMC Identity Compliance Manager, provided the users have no more than 2 logons (access points) being managed by the IDM tools.

  Archive User: If a Product name includes the term "Archive User," that Product can only be used by users whose identity information is stored within the IDM system but is not being actively managed; the information could be stored for the purpose of audit/forensics etc.

  Developer User: If a Product name includes the term "Developer User," that Product can only be used by users who create or modify applications using the BMC Directory Management Studio.

- **License Allocation Restriction for BMC Remedy IT Service Management Suite Products**: Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the "per named user" Unit of Measurement, Customer may exchange 5 named user licenses of the Product for 2 licenses of the same Product with the Unit of Measurement of “per concurrent user” or (ii) on the "per concurrent user" Unit of Measurement. Customer may exchange 2 concurrent user licenses for 5 licenses of the same Product with the Unit of Measurement of “per named user”. Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer’s new Licensed Capacity and the new Unit of Measurement.

- **License Allocation Restriction for BMC Remedy Service Management Products**: Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the "per named user" Unit of Measurement, Customer may exchange 3 named user licenses of the Product for 1 license of the same Product with the Unit of Measurement of “per concurrent user” or (ii) on the "per concurrent user" Unit of Measurement. Customer may exchange 1 concurrent user license for 3 licenses of the same Product with the Unit of Measurement of “per named user”. Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer’s new Licensed Capacity and the new Unit of Measurement.

- **BMC Middleware Management - Performance and Availability and BMC Middleware Management - Transaction Monitoring Products**: If Customer is using Middleware Management version 6. 0 or lower, notwithstanding the Licensed Capacity the number of individual employees or contractors
of Customer to whom access to the Management Console is granted ("End Users") is limited to the lesser of (a) the Licensed Capacity of the Product if priced on a per named user Unit of Measurement, or (b) 250 End Users.

**BMC Middleware and Transaction Management Products**: If Customer is using BMC Middleware Management version 6.0 or lower, when licensed on the per CPU - Subcapacity or per MIPS Unit of Measurement, regardless of the Licensed Capacity, Customer is limited to ten (10) individual employees or contractors to whom access to the Management Console is granted ("End Users"). When licensed on the per named user Unit of Measurement, Customer is limited to the lesser of (a) the Licensed Capacity of the Product, or (b) 250 End Users.

**BMC Mobile Device Management Products**. For BMC Mobile Device Management (MDM) Products, any clickwrap agreement with AirWatch, LLC contained in the Products is void and of no effect. Customer’s use of these Products is governed by the Agreement.

**BMC Monitoring Only Products**: Customer is not entitled to use analytics as further specified in the Documentation.

**BMC myIT Suite**: Each named user shall be licensed for a maximum of three (3) Device Endpoints. "Device Endpoint" means a personal digital assistant or similar computing device. An additional user license is required for every 3 devices registered by a unique named user. For users who register a fourth device and for every multiple of 3 devices registered by a unique user, an additional license is consumed. When a device is unregistered and the total number of devices registered by a unique user falls below 4 or a multiple of 3 devices, a MyIT user license is released for reuse.

**BMC Real End User Experience Monitoring and Analytics - Licensed Add-on Product**: For synthetic transaction monitoring solutions, each instance of the execution server installed should be counted. For real end user transaction monitoring solutions, each instance of the watchdogpointed created should be counted.

**BMC Remedy Products**: Customer may not bypass or delay, in any way, the consumption of a concurrent or named user license to perform an activity that requires a user license (including, without limitation, submitting a ticket to a parallel form and then using workflow to perform the update without a license).

A Remedy instance is defined as a Remedy AR System server or server group sharing a common database. Concurrent user licenses are for use within one Remedy instance and may not be used in more than one instance. Named user licenses cannot be shared between multiple people.

A hot backup license is a replicate of the Remedy production licenses on one backup server. Customer may access that backup server only when the customer server on which the AR System is installed fails or in preparation of that backup server for such situation.

BMC Remedy Smart Reporting component is limited to use with Remedy platform based ITSM applications (both delivered by BMC as well as custom-developed solutions). It may not be used for reporting on non-ITSM applications.

**Development License Restriction for BMC Remedy Products**: If a Product name includes the term "Dev Lsn", Customer will restrict installation, access and use of such Product to a server dedicated to development and testing only, and will not allow any production or commercial activity on that server.

**Load Balanced System Restriction for BMC Remedy Products**: If Customer has multiple servers in a single logical environment pointing to a single AR System database instance, only one Instance of Remedy "per Instance" licenses is required for installation on these servers (except for the AR System, which must be licensed for each server).

**BMC Remedy and myIT Products**: Customer’s perpetual license in the BMC Remedy and/or BMC myIT Products does not include a perpetual license to the Google Maps service that is currently used for the map/location feature within BMC myIT and BMC Remedy with Smart IT. BMC Remedy with Smart IT is available for download with any license of BMC Remedy Products.

**BMC Remedy Service Management Suite**: The license enables the customer to use up to 100 Named myIT Base users for each BMC Remedy Service Management Suite licensed named user and up to 250 Named myIT Base users for each BMC Remedy ITSM Suite licensed concurrent user.

**BMC Remedy Service Desk Product**. The license enables the customer to use up to 100 Named myIT Base users for each BMC Remedy Service Desk licensed named user and up to 250 Named myIT Base users for each BMC Remedy Smarter Service Desk licensed concurrent user.

**BMC Remedy Service Optimization Package**: Each person can have only one user license type (named or concurrent). Each user can have one and only one type of concurrent user license: BMC Remedy Service Management Suite User license, BMC Remedy Service Desk User license or BMC Remedy Service Innovation User license.

**BMC Server Automation - Compliance License Add-on**: Excludes use of BMC BladeLogic agent for server configuration, patching, and provisioning tasks.

**BMC Server Automation - Configuration License Add-on**: Excludes use of BMC BladeLogic agent for the application packaging and deployment of internally built, proprietary, or custom-developed code.

**BMC Server Automation - Patch License Add-on**: Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC Server Automation - Provisioning License Add-on**: Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC Service Desk Express Products**: No terms in any Business Objects or Crystal license agreement embedded in the Product apply to the Product. Customer may own and operate 2 additional copies of the Product solely for internal pre-production configuration and testing purposes.

**BMC Service Desk Express Suite Restriction for BMC Service Desk Express Products**: When purchasing Concurrent User licenses for the "Service Desk Express" Product, regardless of the number of such licenses purchased and regardless of the number of purchases made (including future purchases), Customer is restricted via license keys to a total of (i) five Concurrent Users conducting a process in the report environment of the Crystal Reports "Web Server" product which is embedded in the "Service Desk Express" Product and (ii) two named users accessing the "Crystal Reports Professional" product which is bundled with the "Service Desk Express" Product.

**Products Installed on Customer’s Amazon Web Services ("AWS") Cloud Environment**: In instances where Customer hosts the Product on Customer’s AWS cloud environment, Customer is responsible for working with AWS to ensure the security of its overall AWS cloud environment and the Product.

**Amazon Machine Image ("AMI")**: An Amazon Machine Image ("AMI") is a special type of pre-configured operating system and virtual application software which is used to create a virtual machine within the Amazon Elastic Compute Cloud ("EC2"). An AMI serves as the basic unit of deployment for services delivered using EC2. In instances where BMC provides Customer with an AMI of a Product to be used on Customer’s AWS cloud environment, Customer is responsible for the security of the Product’s operation and any potential vulnerabilities in a Product AMI’s preconfigured OS stack, Application stack, and/or OS configuration.

**BMC Subsystem Optimizer for IMS Restriction**: The BMC Application Restart Control for IMS product and the MainView Batch Optimizer product that are shipped with the BMC Subsystem Optimizer for IMS (Subzero for IMS) License may only be used to manage, update and access IMS data as part of a Subzero for IMS implementation, unless Customer has separately licensed the BMC Application Restart Control for IMS product and the MainView Batch Optimizer product. Customer may not use the functionality of such Products for any other purpose.

**BMC Subsystem Optimizer for DB2 Restriction**: The BMC Application Restart Control for DB2 product and the MainView Batch Optimizer product that are shipped with the BMC Subsystem Optimizer for DB2 (Subzero for DB2) License may only be used to manage, update and access DB2 data as part of a Subzero for DB2 implementation, unless Customer has separately licensed the BMC Application Restart Control for DB2 product and the MainView Batch Optimizer product. Customer may not use the functionality of such Products for any other purpose.

**c. UNITS OF MEASUREMENT**: The following units of measurement apply to certain Products.

**per adapter**: A license is required for each installation of an adapter that interfaces with the Product.

**per client**: A license is required for each unit of software with the official name of Remote Sys Call Daemon or RSCD Agent that can be deployed on a physical or virtual operating system.

**per application**: A license is required for all unique collection of application component templates and configuration objects used to form a single logical platform defined by the Customer.

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per asset: A license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint, Data Center Rack, Data Center IP Sensor, or Group using BMC's standard Computer classification.

per client: A license is required for each Client Endpoint. ‘Client Endpoint’ means a laptop, desktop, or other non-Server Computer.

per concurrent access license: A license is required for the maximum number of simultaneous sessions accessing the Product. Sessions are counted in groups of 5.

per concurrent session: A license is required for the maximum number of simultaneous sessions accessing the Product.

per CPU – Full Capacity: A license is required for the total number of active, physical CPUs in each Computer upon which the Product is installed or which the Product is managing, regardless of whether the CPU is virtual or physical. CPU means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the “socket” which can contain one or more processor cores.

per CPU – Subcapacity: A license is required for all active, physical CPUs which the Product manages, either remotely or locally. ‘CPU’ means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the ‘socket’ which can contain one or more processor cores.

per database: A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges.

per deployed robot: A license is required for all PATROL End-to-End Response Timer robots deployed.

per Device Endpoint: A license is required for each Device Endpoint. ‘Device Endpoint’ means a personal digital assistant or similar computing device.

per engine: A license is required for each mainframe general purpose engine on the server upon which the Product is installed and/or managed regardless of whether the engine is virtual or physical. Engine means a virtual or physical device managed by the Product.

per enterprise: A license is required per Customer and per Client each, regardless of the number of times Customer installs the Product in its Enterprise or its Client’s Enterprise. ‘Client’ means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.

per instance: A license is required for the total allocated database space of all Computers on which the Product has been installed or operated.

per gigabyte range: A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The Product may not be moved to another Computer unless the current Computer is taken out of service. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges among different Computers. For example: if Customer licenses 26-50 gigabytes, the Customer is only licensed for a maximum of 50 gigabytes in total across all the databases of the licensed Product on one particular Computer.

per installation: A license is required for each Server managed by the Product or one of its components whether locally or remotely. ‘Server’ means a virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies. For purposes of clarity, a Server Endpoint includes containers.

per licensed asset – device license: A license is required for every Device Endpoint that is monitored, managed, or discovered by the Product(s). 'Device Endpoint' can be any virtual or physical Non-Server Client Computer (e.g. laptop, desktop computer, PDA, smart phone); any Network device (e.g. router, switch, hub) standalone or chassis-based device/card/processor using a unique IP-address (also includes virtual network devices managed through the IP address of its physical host); and independent Storage (e.g. a disk array, a fiber switch, a tape library, a switch director). When applicable, the license must be computed at the appropriate tier level. For example, a license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint, Data Center Rack, Data Center IP Sensor, or Group using BMC's standard Computer classification.

per managed asset – device license: A license is required for each Server Endpoint that is managed, including all Computers coupled in a parallel Sisplex environment, upon which the Product is installed, or which is monitored or managed by the Product. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide. Computer-specific passwords will be issued for the Product.

per monitored element: A license is required for all remotely monitored elements, such as a Server, database, operating system, URL, firewall, storage, or network device.

per monitored server: A license is required for each Server Endpoint (with a Classification at the appropriate Level, if applicable) which the Product or one of its components is monitoring regardless of whether the Product is monitoring it locally or remotely.

per named user: A license (with a Classification at the appropriate Level, if applicable) is required for each individual employee or contractor of Customer. When user-based interaction is required, a license is required for all individuals for whom access has been granted to the Product on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Product at any given time.

per node: A license is required for every Node which the Product manages and/or monitors. ‘Node’ means a laptop, desktop, mobile device or any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per port: A license is required for each port. A port is defined as a physical connection point used by a storage device to connect other devices or systems. For the purpose of BMC licensing, all active ports (Fibre Channel, iSCSI, etc.) for all managed devices (storage arrays, filers, tape libraries, etc.) are counted. Ports on hosts, gateways and switches are not to be counted.

per port exceeded: A license is required for each unique port/operating system project, facility or business unit, as the case may be specified at the time of order.

per Protocol: A license is required for each Protocol. ‘Protocol’ means a physical or logical service or protocol.

per Server Endpoint: A license is required for each Server Endpoint. ‘Server Endpoint’ is any virtual or physical Computer which provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per Service Management MIPS: A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sisplex environment, upon which the Product is installed, managed or monitored. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of the Product's installation on or management of Integrated Facility for Linux (IFL) engines. ‘Network Device’ means a stand-alone or chassis-based network device/card/processor.

per site: A license is required for the physical site at which the Product is installed regardless of the number of times the Product is installed.

per task: For all Control-M Products, except those that run exclusively in the Mainframe environment, a license is required for the maximum number of tasks (as defined below) present in the Control-M ‘Active Jobs’ database in any 24-hour period, regardless of whether the Tasks execute or not. For the Control-M Products that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below)
present in solely the Mainframe environment’s Control-M “Active Jobs” database. Tasks in the Control-M “Active Jobs” databases include all Tasks in all Distributed Systems and/or Mainframe environments in any 24-hour period (including but not limited to development, staging, QA, pre-production, production, and test environments), except that, (i) SMART folders/table and sub-folders/tables which contain scheduling definitions and are listed as tasks in the “Active Jobs” databases are not counted as Tasks, (ii) Tasks that have time zone settings may remain in the “Active Jobs” databases for up to three consecutive days, but are only counted as one Task, (iii) A Task that runs more than once during the day (with the same Order ID) is counted as one Task – this includes Tasks that are rerun and cyclic Tasks, and (iv) Tasks that are provided for by licenses under alternative Units of Measurement (i.e. tier or MIPS) are not considered Tasks under this “per task” unit of measurement. The number of steps or scripts executed within the named Task shall have no bearing upon the number of Tasks licensed. “Task” is interchangeable with “job” and means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that is scheduled to execute, as well as the scheduling criteria, flow control, and resource usage.

**per third-party software:** A license is required for the total aggregate storage capacity in the Enterprise.

**Attachment A (Continued) - Amendment to the BMC End User License Agreement For US Federal End Users**

This Amendment to End User License Agreement for All BMC Software License Agreements (“Amendment”) is between BMC Software Incorporated (“BMC”), and the End User. In consideration of the mutual promises and covenants contained in this Amendment, the parties agree as follows:

This Agreement agreed to by both parties, applies to any agency or organization (“Ordering Activity”) that places an order under this Agreement. This Amendment together with the End User License Agreement for the applicable BMC Software (such license generally referred to herein as the “License Agreement”), governs the Ordering Activity’s installation and use of such BMC Software. This Amendment only applies to the License Agreements for those BMC Software products sold under this Agreement. Unless expressly stated to the contrary herein, all capitalized terms in this Amendment shall have the meanin

a. Pursuant to Section 12.212 of the Federal Acquisition Regulations (“FAR’”). BMC and GSA agree that the modifications to the License Agreements are appropriate to ensure compliance with federal laws and to meet the U.S. Government’s needs. Accordingly the License Agreement is hereby modified by this Amendment as it pertains to use of BMC’s software by any Ordering Activity pursuant to a task order placed under the GSA Contract.

b. This Amendment only applies to Ordering Activities of the U.S. Government (including agencies and departments from the Executive Branch, the Congress, or the Military) and independent federal agencies that are authorized to purchase IT Schedule 70 goods and services under the GSA Contract. This Amendment shall not apply to prime contractors, state/local government entities, or other entities authorized to make purchases under the GSA contract. In addition, this Amendment shall apply to the Ordering Activity itself, shall only apply to the installation and use of the BMC Software for official government business only on behalf of the Ordering Activity, and shall not apply to any individual who utilizes the BMC Software Products for his or her personal use or for a use.

c. Installation and use of the software shall be in accordance with the License Agreement, unless an Ordering Activity determines that it requires different terms of use and BMC agrees in writing to such terms in a valid task order placed pursuant to the GSA Contract.

1. **Scope:** Any provisions restricting additions or modifications to the License Agreement are hereby superseded by this Amendment to the extent they would preclude this Amendment or any valid task orders placed under the GSA Contract. To the extent the License Agreement conflicts with this Amendment or any relevant task orders, the conflict shall be resolved according to the following order of precedence: (1) Federal law, (2) the FAR, (3) terms of the Schedule Contract, (4) this Amendment, (5) any other amendment that BMC and the Ordering Activity may separately enter into to vary the terms of the License Agreement to accommodate unique license terms under a Task Order, and (6) the License Agreement. This Amendment may only be modified upon written consent of both parties.

2. **Contacting Authority:** Pursuant to FAR 1.601(a) and 43.102, all provisions in the License Agreement which would allow any individual, except for an authorized contracting officer, to bind the U.S. Government to the terms of the License Agreement or any modifications thereto are hereby deleted. Such provisions include the ability of the software manufacturer to unilaterally modify the terms of the License Agreement and any requirement to accept terms by use of means, download, or click-through agreements. Notwithstanding the foregoing, GSA and Ordering Activity expressly agree that when an authorized contracting officer of the Ordering Activity places a task order for the BMC Software pursuant to the GSA Contract, all terms of the License Agreement in the effect at the time the product was added to the GSA Contract shall be legally binding on Ordering Activity and shall be given full and legal effect. In the event that Ordering Activity receives BMC Software through a task order that is not authorized by the Ordering Activity’s authorized contracting officer or Ordering Activity fails to acknowledge in writing to BMC Software that the License Agreement is binding on Ordering Activity, Ordering Activity shall not be deemed to have any license to the BMC Software and BMC reserves all rights, remedies, and enforcement actions and venues available to BMC under state and federal law, including but not limited to all intellectual property laws without regard to the Dispute Resolution Process or Governing Law provisions of this Amendment.

3. **Remedies:** Pursuant to 28 U.S.C.§ 1498, any provisions of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement are hereby deleted (subject to the third sentence of this Section 3). Any provisions of the License Agreement which would preclude continued performance of the contract during resolution of any disputes are hereby deleted, including any provisions requiring the U.S. Government to agree that an injunction is appropriate in the event of a breach of the License Agreement (subject to the third sentence of this Section 3). Notwithstanding the foregoing, any License Agreement clause providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement or any other breach of the License Agreement shall continue to apply if an equitable remedy is available under United States Federal Law. If the Ordering Activity breaches one of the following (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service, service bureau arrangement, or time sharing basis, BMC may terminate the License Agreement; however prior to terminating this License Agreement, BMC shall infor

4. **Payments and Deliveries:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to commit to pay any future maintenance or support costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted.

5. **Public Access to Information:** BMC agrees that this License Agreement and Amendment contain no confidential or proprietary information and acknowledges and the License Agreement and this Amendment will be available to the public, provided however, that GSA and BMC agree that other items identified in the License Agreement (such as, without limitation, source code and other technical data) provided to the Ordering Activity is confidential and proprietary information and shall not be disclosed.

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Advertisements and Endorsements: Any provisions allowing BMC to use the name or logo of GSA or any Ordering Activity to advertise or to imply an endorsement of BMC’s products or services are hereby deleted. Unless specifically authorized by an Ordering Activity, such use of the name or logo any U.S. Government entity is prohibited.

6. DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY: Any limitation of liability in the License Agreement is hereby deleted and the following provisions shall apply:

Neither BMC nor an Ordering Activity shall be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, neither BMC nor an Ordering Activity shall be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

Dispute Resolution and Venue: Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes relating to the License Agreement and to this Amendment shall be resolved in accordance with FAR and the Contract Disputes Act 41 U.S.C. §§ 601-613, GSA and Ordering Activity expressly acknowledge that BMC shall have standing to bring such claim under the Contract Disputes Act.

7. Termination: Termination of the License Agreement and this Amendment shall be governed by the FAR and the Contracts Disputes Act, 41 U.S.C. §§ 601-613, and any provisions of the License Agreement relating to termination are hereby deleted, including any provision permitting BMC to unilaterally terminate the License Agreement subject the following exceptions:

a. BMC is entitled to cancel or terminate the License Agreement if such remedy is granted to it after conclusion of the Contract Disputes Act dispute resolution processed in Section 6 above or if such remedy is otherwise available to BMC under United States federal law.

b. BMC is entitled to cancel or terminate the License Agreement if one of the events identified in Section 3 above apply.

8. Audit: Any provision in the License Agreement permitting BMC to audit, inspect, or monitor use of the software for compliance with the License Agreement shall be binding on Ordering Activity but is contingent upon reasonable notice to the Ordering Activity and adherence to reasonable security measures the Ordering Activity deems reasonably appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities if clearances are required.

9. Governing Law: The License Agreement and this Amendment shall be governed by the laws of the United States, unless there is no applicable law of the United States which would apply, in which case the laws of the State of Texas shall apply. Any provisions in the License Agreement stating that the License Agreement shall only be governed by the law of any particular U.S. State or U.S. Territory or district, or foreign nation, is hereby deleted.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Brandes Associates, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions shall be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1408 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance in an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) renewals. All manufacturer specific terms that provide for automatic renewals violate the anti-deficiency act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the gsa customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a government contract, and not when the clause is triggered.

n) future fees or penalties. All manufacturer specific terms that require the government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the prompt payment act (31 U.S.C. § 3901 et seq.) or equal access to justice act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the gsa customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) third party terms. When the end user is an instrumentality of the u.s., no license terms bind the gsa customer unless included verbatim (not by reference) in the eula, and the eula is made an attachment to the underlying gsa schedule contract. all terms and conditions affecting the gsa customer must be contained in a writing signed by a duly warranted contracting officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All manufacturer specific terms that incorporate third party terms by reference are hereby superseded.

q) dispute resolution and standing. Any disputes relating to the manufacturer specific terms or to this rider shall be resolved in accordance with the far, the underlying gsa schedule contract, any applicable gsa customer purchase orders, and the contract disputes act. The ordering activity expressly acknowledges that EC America as contractor, on behalf of the manufacturer, shall have standing to bring such claim under the contract disputes act.

r) advertisements and endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All manufacturer specific terms that allow the contractor to use the name or logo of a Government entity are hereby superseded.

s) public access to information. EC America agrees that the attached manufacturer specific terms and this rider contain no confidential or proprietary information and acknowledges the rider shall be available to the public.

1) confidentiality. Any provisions in the attached manufacturer specific terms that require the ordering activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the manufacturer’s specific terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the manufacturer’s specific terms or the Schedule Contract to the contrary, the gsa customer may retain such confidential information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained confidential information will continue to be subject to the confidentiality obligations of this Rider, the manufacturer’s specific terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c), GSA has not issued any because it co...

v) ownership of derivative works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the gsa customer shall receive unlimited rights to use such derivative works at no further cost.

3. order of precedence/conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable gsa customer purchase order, the terms of the gsa schedule contract or any specific, negotiated terms on the gsa customer purchase order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
BRANDES ASSOCIATES, INC.

BRANDES ASSOCIATES, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS.

1.1 AET is an operating Division of Brandes Associates, Inc., a California Corporation.

1.2 “Affiliate” means, for either Party, any entity which directly or indirectly controls, is controlled by, or is under common control with that Party, where “control” means the power to direct the management and policies of an entity, whether through majority ownership of voting securities, by contract, or otherwise.

1.3 “Authorized User” will have the meaning set forth in Section 6.3.

1.4 “Confidential Information” means any material or information relating to a Party’s research, development, products, product plans, services, licensees, licensee lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the Licensed Software and any other software or databases (including any data models, structures, non-Licensee specific data and aggregated statistical data contained therein) of AET will constitute Confidential Information of AET.

1.5 “Cover Page” means AET standard form of cover page to which these Master Terms are attached.

1.6 “Delivery Date” has the meaning set forth in Section 8.1.

1.7 “Demonstration Version” means a version of the Licensed Software, so identified, to be used only to review, demonstrate and evaluate the Licensed Software for a limited time period.

1.8 “Documentation” means the user documentation related to the use and operation of the Licensed Software, but only to the extent that AET, in its sole discretion, makes such documentation generally available for commercial distribution. All Documentation will be provided in English.

1.9 “Licensed Software” or “Software” will mean the object code version of any AET software, including any third-party code contained therein, and related documents. JavaScript in the channel transformers is also considered object code for the purposes of this paragraph.

1.10 “Marks” means the trade names, trade dress, trademarks, service marks, commercial symbols, domain names, brands, designs, logos and/or any other marks used by AET to denote AET as the source of its products and services.

1.11 Reserved.

1.12 “Pre-commercial Release or Beta Version” means test copies of the software, so identified, released prior to the fully tested version ready for commercial use.

1.13 “Services Agreement” means any addendum to this Agreement, if any, and may include, without limitation, an Order, AET standard form of Maintenance and Support Services Agreement, and/or Professional Services Agreement.

2. GENERAL.

These Master Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), contain the general terms and conditions governing the general legal relationship between AET and Operating Activity relating to the mutual covenants and obligations of the Parties set forth in the attached. AET provision of licenses to its proprietary software and the provision of services related to such licenses are subject to the terms and conditions contained in this Agreement. However, Ordering Activity acknowledges and understands that these Master Terms do not, absent fee payment of any applicable fees described herein impose any obligation upon AET to provide any such licenses or services other than those set forth in these Master Terms.

3. LICENSE.

Subject to the terms and conditions of this Agreement, the underlying GSA schedule contract, schedule pricelist and compliance with the terms and conditions of the applicable order, AET hereby grants Ordering Activity a limited, non-exclusive, worldwide, non-transferable, license (for so long as Ordering Activity is in compliance with the terms of this Agreement, including, without limitation, the order) to use for internal business purposes the executable code version of the Licensed Software, provided any copy of the Licensed Software must contain all of the original proprietary notices, in accordance with the terms and conditions contained herein. Ordering Activity may not modify the Licensed Software or disable any licensing or control features of the Licensed Software. Subject to the terms and conditions of this Agreement, the underlying GSA schedule contract, schedule pricelist and applicable order AET hereby grants to Ordering Activity a non-exclusive, non-transferable, non-sublicenseable right and license during the term of this Agreement to make copies of the Documentation provided by AET, solely for Ordering Activity’s internal use in connection with the exercise of rights granted in Section 3. Ordering Activity acknowledges that no right is granted to modify, adapt, translate, publicly display, publish, create derivative works or distribute the Documentation.

4. ADDITIONAL LICENSE PROVISIONS

4.1 General Restrictions. Except as otherwise expressly provided in this Agreement, Ordering Activity will not copy, modify, create derivative works of, or translate the Licensed Software, in whole or in part, nor resell, license, lend, grant a security interest in, or distribute the Licensed Software to third parties.

4.2 Reverse Engineering. No license is given to Ordering Activity for the source code to the Licensed Software. Ordering Activity agrees that it, directly or indirectly, will not reverse engineer, decompile, modify, or prepare derivative works of the Licensed Software.

4.3 Authorized Use. Subject to the terms and conditions of this Agreement, the underlying GSA schedule contract, schedule pricelist and applicable order, AET hereby grants, and Ordering Activity accepts, the right and license to install and use the Licensed Software on one computer. Such installation is called an “instance”. Ordering Activity acknowledges and agrees that, as between Ordering Activity and AET, Ordering Activity will be responsible for all acts and omissions of its Users, and any act or omission by an Authorized User, which, if undertaken by Ordering Activity, would constitute a breach of this Agreement.

4.4 Sublicenses. Without the prior written consent of AET, Ordering Activity will not sublicense or permit the sublicense of any of the rights granted to Ordering Activity by AET in this Agreement.

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During the term of this Support Agreement, the maintenance and support services (“Maintenance and Support Services”) to be provided by AET in its sole discretion from time to time.

The Contact will be a member of Ordering Activity’s technical staff designated to carry out all contacts with AET pursuant to this Support Agreement.

This Support Agreement applies only to the software product (“AET Software”), which has been licensed by AET to Ordering Activity pursuant to the License Agreement and incorporated by reference herein.

AET MAINTENANCE AND SUPPORT SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS

1: PRODUCT:
This Support Agreement applies only to the software product (“AET Software”), which has been licensed by AET to Ordering Activity pursuant to the Master License and Services Agreement (the “License Agreement”).

2: ORDERING ACTIVITY CONTACTS
2.1. The address for Ordering Activity and Ordering Activity’s “Contact” person are provided by Ordering Activity to AET at the time of entering into the License Agreement and incorporated by reference herein. The Contact will be a member of Ordering Activity’s technical staff designated to carry out all contacts with AET pursuant to this Support Agreement.

3: RESERVED

4: MAINTENANCE AND SUPPORT SERVICES
During the term of this Support Agreement, the maintenance and support services (“Maintenance and Support Services”) to be provided to Ordering Activity under this Support Agreement are:

4.1. Incident Reporting. AET will have technical support personnel available as specified herein. Ordering Activity will receive an initial response to inquiries as specified herein. An “Incident” is a failure of the AET Software to conform in all material respects to its functional specifications as then published by AET, provided that a reported Incident will not be deemed to be an Incident unless: (i) AET is able to reproduce it under the same or similar conditions with reasonable effort on a supported platform; (ii) it does not result from misuse or improper use of the AET Software by Ordering Activity; and (iii) the AET Software has not been modified.

4.2. Error Correction. AET will use commercially reasonable efforts to create Error Corrections as specified herein. An “Error Correction” is defined as a software modification or addition, which when made or added to the AET Software or its documentation establishes material conformity of the AET Software with its functional specifications. Error Corrections include, without limitation, changes in the documentation, procedures or routines that when used in the regular operation of the AET Software eliminates the practical adverse effect on Ordering Activity of the nonconformity.

4.3. Enhancements. An “Enhancement” is defined as extensions and other changes that are logical improvements to the AET Software and that AET makes generally available to Ordering Activities receiving Maintenance and Support Services. Each Enhancement will include any Error Corrections issued since the previous Enhancement. Enhancements do not include (i) new software products that are generally made available as a separate, price-listed option or additions to the AET Software or upgrades to new platforms or (ii) custom program modifications or requests for new functionality that are not made generally available to Ordering Activities receiving Maintenance and Support Services. AET will notify the Contact by e-mail when any Enhancements to the AET Software are made available to customers receiving Maintenance and Support Services. On request, AET will ship or FTP one copy of the Enhancement to the Contact at no additional cost, provided however, that AET reserves the right to require instead that the Contact download any or all Enhancements from AET's designated website.

4.5. Technical Support. During the term of this Support Agreement, AET will provide Ordering Activity with support to provide assistance with technical issues relating to the installation, operation and functionality of the AET Software as specified within. This support specifically, but without limitations, does not include assistance with Ordering Activity’s input errors, issues related to any training content of the AET Software, issues related to Ordering Activity’s hardware, or other problems related to deployment of the AET Software in conjunction with other software or operating systems.

5: LIMITATION ON MAINTENANCE AND SUPPORT SERVICES

5.1. AET is obligated to provide Maintenance and Support Services only with respect to Releases (as defined below) as specified herein. AET may refuse to provide Maintenance and Support Services if Ordering Activity fails to install all Error Corrections or Enhancements within sixty (60) days of receipt of the Error Correction or Enhancement.

5.2. AET will have no obligation to provide any Maintenance and Support Services with respect to AET Software modified by Ordering Activity.

5.3. This Support Agreement, specifically but without limitation, does not obligate AET to provide: (i) project management; (ii) personnel management; (iii) application design or development; (iv) performance of Maintenance and Support Services on-site; (v) consulting, training or other support services relating to software other than the AET Software; (vi) support or maintenance services relating to any hardware or peripheral devices; (vii) recreation or recovery of data lost for any reason whatsoever; (viii) performance of the generalized duties of a software developer engaged to create miscellaneous software applications at Ordering Activity’s discretion; or (ix) delivery of improvements to AET Software requested by Ordering Activity prepared on a customized basis for Ordering Activity.

6: RELEASES AND OWNERSHIP

6.1 All rights, titles and interests in and to any programs, systems, data or materials used or produced by AET in the performance of Maintenance and Support Services, including but not limited to, Error Corrections, Enhancements or other releases (“Releases”), will remain the sole property of AET. All Releases received by Ordering Activity from AET will become part of the AET Software and will be governed by the terms of the License Agreement. AET reserves the right to define the addition of new functionality or other elements as a new product and not a Release. AET is under no obligation to develop new Releases. All Releases, including all copyright interests and intellectual property, will remain the sole property of AET regardless of whether Ordering Activity or its employees or contractors will have contributed to the conception or the Release, joined in the effort of its development or paid AET for creation of it.

7: LIMITATION OF WARRANTY

7.1 AET warrants that the MAINTENANCE AND SUPPORT SERVICES will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with MAINTENANCE AND SUPPORT SERVICES written materials accompanying it, EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, AET MAKES AND ORDERING ACTIVITY RECEIVES, NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE MAINTENANCE AND SUPPORT SERVICES TO BE RENDERED OR THE RELEASES TO BE RECEIVED HEREUNDER, AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT ARE EXPRESSLY EXCLUDED; ALL RELEASES ARE PROVIDED “AS IS.” AET DOES NOT WARRANT THAT THE MAINTENANCE AND SUPPORT SERVICES HEREUNDER WILL MEET THE NEEDS OF ORDERING ACTIVITY OR PERMIT THE AET PROGRAMS TO OPERATE WITHOUT PROBLEMS, ERRORS OR INTERRUPTIONS.

8: RESERVED

APPENDIX A: AET SERVICE LEVEL DESCRIPTION

Terminology and Definitions

Response Time: Response time is defined, as the time required for the assigned AET support person to call the initiator of the Incident and begin work on the recorded Incident.

Resolution Time: AET will use its best efforts to provide a workaround or fix once the Incident has been reproduced by AET or a AET Software defect has been identified. The time required to accomplish this is defined as Resolution Time.

Incident Class: Incident classes are identified below:

Level 1: The AET Software is down or severely impacted, or Ordering Activity’s data is lost or destroyed.
No reasonable workaround is currently available (for example, system crashes or panics, or corrupted data).

Level 2: The AET Software is moderately affected. No workaround is currently available or the workaround is unreasonably cumbersome to use.

Level 3: The issue with the AET Software is not critical and the issue does not hinder normal operation, or a reasonable workaround is available. Level 3 also includes: general questions, comments or errors in documentation, which should be recorded but has no impact on daily work. Notwithstanding the foregoing, if an Incident is reported to AET via email, the Incident will be classified as Level 3.

Product Manager: AET's Product Manager will be the primary contact for Ordering Activity for new business requests and the facilitation of service support performance reviews. AET reserves the right to change the Manager at any time without notice.

Service Levels

AET standard support services program includes the following:

1. Standard Support Hours are Monday through Friday from 8:00 AM to 8:00 PM (EST), excluding holidays and weekends.
2. AET is available to open new support cases by telephone, email, or online helpdesk during the Standard Support Hours.
3. For the most current Releases of the AET Software, AET provides Error Correction or workarounds required for the AET Software to conform to functional specifications as defined in the “APPENDIX B: AET SOFTWARE LIFECYCLE AND SUPPORT” below.
4. AET provides new Releases and Enhancements for the AET Software covered under Ordering Activity’s maintenance agreement at no additional fee.
6. AET provides training for new features covered under Ordering Activity’s maintenance agreement for a fee at the Licensee’s Site or AET Site.

Response and Resolution Times

Incident Class Response Resolution
Level 1 2 hours

Upon confirmation of receipt, AET begins continuous work on the Incident, provided that a Ordering Activity resource must be available at any time to assist with problem determination. AET will use its best efforts to provide a workaround or fix within 48 hours, once the Incident has been reproduced by AET or a AET Software defect has been identified. AET may at its sole discretion incorporate any fix(es) in future release(s) of the AET Software.

Level 2 8 business hours

Upon confirmation of receipt, AET will use its best efforts to provide a workaround or fix within 7 business days, once the Incident has been reproduced by AET or a AET Software defect is identified. AET may at its sole discretion incorporate any fix(es) in future Release(s) of the AET Software.

Level 3 24 business hours

AET will use its best efforts to provide a workaround or fix within 10 business days, once the Incident has been reproduced by AET or a AET Software defect is identified. AET may at its sole discretion incorporate any fix(es) in future Release(s) of the AET Software.

Key Licensee Processes

Incident Reporting

All incidents related to support can be logged by contacting technical support.

Technical Support can be contacted via the following methods:
1. Phone 1-888-326-8048
2. Email support@syndeogateway.com

When contacting AET Technical Support via phone, email, or the online AET Helpdesk, a case is created with an associated priority. If a support case is created via the online helpdesk or over the telephone, customers may specify the case priority. If a case is created via email, the case priority will default to Level 3.

AET reserves the right to change the contact information described above at any time.

Escalation

If an incident is not resolved to Ordering Activity’s reasonable satisfaction, the Incident may be escalated. Incident issues are to be escalated first to Product Manager, secondly to the Software Development Manager, and finally to the CTO.

TECHNICAL SUPPORT ESCALATION LIST

1. Phone 1-888-326-8048
2. Email support@syndeogateway.com

First Level Escalation: Kenneth Taylor, Product Manager
Kenneth.Taylor@brandesassociates.com
AET reserves the right to change the contact information described above at any time.

New Business Introduction

To initiate a request for a new service or new product feature, please contact the Product Manager. The Product Manager will document the high-level requirements, develop a cost estimate for delivering the system functionality or service, and develop a timeline for system’s implementation.

APPENDIX B AET SOFTWARE LIFECYCLE AND SUPPORT

SOFTWARE RELEASE TERMINOLOGY

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Release Numbering</td>
<td>AET uses a three-place numbering system to designate Releases of software. The format is XX.YY.ZZZ, where X indicates a major release, Y indicates a minor release, and Z indicates a maintenance release. An example would be release 3.2.19. Often in referring to general product versions and releases, the maintenance release is omitted. For example, both 3.2.19 and 3.2.20 may sometimes be referred to as release 3.2.</td>
</tr>
<tr>
<td>Maintenance Release</td>
<td>For the purpose of this support policy, a maintenance release is considered part of the main release. For example, 3.2.19 is supported as part of the 3.2 release.</td>
</tr>
<tr>
<td>Current Release (GA)</td>
<td>The most recent General Availability (GA) major and minor release combination of AET software is commonly known as the ‘current release’.</td>
</tr>
<tr>
<td>GA-1 Release</td>
<td>The latest major/minor release combination to become generally available (GA) prior to the current release. For example, if the current release is 3.2, then GA-1 is 3.1.</td>
</tr>
<tr>
<td>GA-2 Release</td>
<td>The latest major/minor release combination to become generally available prior to the GA-1 release. Continuing the example above, if GA-1 is 3.1, then GA-2 is 3.0.</td>
</tr>
</tbody>
</table>
| Full Support          | Full support is provided to Ordering Activity based on the terms and conditions of the Maintenance and Support Agreement. This includes:  
                        | Error Corrections as defined in Section 4.2  
                        | Enhancements as defined in Section 4.3  
                        | Workarounds  
                        | Other modifications provided at no charge at AET sole discretion. |
| Limited Support       | As a Release enters limited support (as described below), the following guidelines apply:  
                        | New enhancements, error corrections, and/or workarounds will not be made to the Release. AET will direct customers to existing enhancements, error corrections and workarounds applicable to the reported case. AET may develop fixes for problems of high technical impact or business exposure for the customer at AET sole discretion. AET may direct customers to upgrade to a more current Release of the AET Software. |

No Support

Product Releases that are no longer supported will not have any Error Correction or Enhancements added. Ordering Activity must upgrade to at least a Full Support Release to bring the subscription current in order to receive support under this Maintenance Agreement.

AET SOFTWARE LIFECYCLE AND SUPPORT

AET provides the following support for various releases of software:
AET Software Release  Level of Support
Current Release (GA)  Full Support
GA-1, GA-2  Limited Support
Releases prior to GA-2  No Support

APPENDIX C: AET PROFESSIONAL SERVICES AGREEMENT

1. ADDITIONAL DEFINITIONS. Certain capitalized terms used in this Professional Services Agreement, not otherwise defined above, shall have the meanings set forth or cross-referenced below. Capitalized terms used in this Professional Services Agreement that are not otherwise defined in this Professional Services Agreement have the meaning set forth in the Master Terms.

1.1 “Professional Services” has the meaning set forth in Section 2.1.

1.2 “Statement of Work” has the meaning set forth in Section 2.2.

2. PROFESSIONAL SERVICES

2.1 Professional Services. The parties anticipate that Ordering Activity may desire to engage AET to perform certain services in connection with the licenses or access rights granted to Ordering Activity by AET under separate Exhibits to this Agreement, including, by way of example, installation, configuration and/or training services. Subject to the terms and conditions set forth in this Professional Services Agreement, the underlying GSA schedule contract, schedule pricelist and applicable order, AET shall use commercially reasonable efforts to perform the services as set forth in Statements of Work (as defined below) separately executed by the parties (the “Professional Services”). AET shall perform the Professional Services in a professional manner in accordance with industry standards.

2.2 Issuance of Statements of Work. Ordering Activity may request that AET perform services by requesting proposed Professional Services. AET shall prepare draft statements of work as an exhibit to this Professional Services Agreement (each, a “Statement of Work”). Such Statement(s) of Work shall describe the fees, costs, and expenses payable by Ordering Activity in connection with the performance of such services. Ordering Activity shall promptly notify AET of its acceptance or rejection of such Statement of Work. Until the acceptance in writing of the proposed Statement of Work, AET shall have no obligation to perform the proposed Professional Services, provided that this Professional Services Agreement shall remain in full force and effect in accordance with Section 4.

2.3 Modifications. Ordering Activity may at any time request a modification to the Professional Services to be performed pursuant to any particular Statement of Work by written request to AET specifying the desired modifications. AET shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the Statement of Work. If accepted in writing by Ordering Activity, such modifications in the Statement of Work shall be performed under the terms of this Professional Services Agreement. Modifications in any Statements of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

3. PERSONNEL

3.1 Suitability. AET shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. AET may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

3.2 Ordering Activity Responsibilities. Subject to Government security requirements, Ordering Activity shall make available in a timely manner at no charge to AET all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Ordering Activity required by AET for the performance of the Professional Services. Ordering Activity shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Ordering Activity. Ordering Activity shall provide, at no charge to AET, office space, services and equipment (such as copiers, fax machines and modems) as AET reasonably requires to perform the Professional Services.

3.3 Nonsolicitation. Ordering Activity acknowledges and agrees that the employees and consultants of AET who perform the Professional Services are a valuable asset to AET and are difficult to replace. Accordingly, Ordering Activity agrees that, for a period of one (1) year after the termination or expiration of this Professional Services Agreement, it shall not knowingly solicit for hire (whether as an employee, independent contractor or consultant) any AET employee or consultant who performs any of the Professional Services. Such prohibitions shall not apply to employees or consultants who answer public advertisements, or who apply for employment with Ordering Activity without any solicitation.

4. PROPRIETARY RIGHTS. Unless otherwise expressly agreed in any particular Statement of Work, except to the extent that the same constitutes or embodies Ordering Activity’s Confidential Information, ownership of all work product, developments, inventions, technology or materials provided under this Professional Services Agreement shall be solely owned by AET, subject to the usage rights granted to Ordering Activity under the relevant Statement of Work.

5. LIMITATION OF WARRANTIES AND LIABILITY. AET makes no representations or warranties under this Professional Services Agreement, and Ordering Activity acknowledges that this Professional Services Agreement is subject to all disclaimers and limitations or liability set forth in the Master Terms.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached BravoSolution ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS (70/0511T) contract number GS-35F-0511T (the "Schedule Contract"). Installation and user of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Form. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA
Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BRAVOSOLUTION

BRAVOSOLUTION LICENSE, WARRANTY AND SUPPORT TERMS

Following the BravoSolution General Terms and Conditions are specific terms for BravoSolution Subscription Software, Support, Professional Services, Hosting Services and Hosting Service Levels.

GENERAL TERMS AND CONDITIONS.

1. RESERVED.

2. PROPRIETARY RIGHTS.

2.1 Proprietary Rights. Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to the Licensed Software and Documentation, but excluding Content. Ordering Activity agrees to reproduce and not to remove the copyright, trademark and other proprietary notices contained on or in the Licensed Software and Documentation as delivered to Ordering Activity on all copies of such Licensed Software. Ordering Activity shall not take any action to jeopardize, limit or interfere with such ownership of and rights with respect to the Licensed Software and Documentation. Contractor reserves all rights not explicitly granted in the Agreement. Ordering Activity shall not sublicense, sell or otherwise transfer the Licensed Software without the express written permission of Contractor.

2.2 Ownership of Inventions. The parties do not anticipate that they will undertake any development work under this Agreement, and any such development work shall be the subject of a separate written agreement between the parties. Notwithstanding the foregoing, and except as expressly set forth in an applicable written agreement, Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to all Inventions and all components or any reproductions thereof, in whole and in part. No Intellectual Property Rights in or to any Inventions is conveyed to Ordering Activity under this Agreement other than any limited grants of access rights or licenses specifically granted herein. Ordering Activity agrees not to remove any copyright, trademark or other proprietary notice contained on or in the Inventions as delivered to Ordering Activity. Contractor shall own all modifications to the Licensed Software and Documentation made by Contractor pursuant to any Services provided hereunder. Subject to the foregoing, and except as set forth in a Statement of Work, Ordering Activity shall be the sole owner of, and shall have the sole and exclusive right, title and interest in the deliverables, specifications, programs, records or other data or materials specifically developed by Contractor, its employees, agents or subcontractors in the course of Contractor’s performance of this Agreement (hereinafter and herebyinbefore, “Work Product”).

2.3 Other Property of the Parties. Subject to Schedule I, Section 2.2, each party acknowledges and agrees that all software, information and related materials (including all Intellectual Property Rights thereto) owned by a party prior to this Agreement shall remain the sole and exclusive property of such party. Each party further agrees and acknowledges that such party or its employees, representatives or agents, have not acquired or will not acquire any proprietary interest in or right to, such materials. Notwithstanding the foregoing, Ordering Activity acknowledges and agrees that Contractor may use (including, without limitation, in future products) without restriction all ideas, suggestions, feedback, improvements, data, reports or the like concerning the Licensed Software or Services that may be communicated to Contractor or BravoSolution by Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time.

3. RESERVED.

4. RESERVED.

5. RESERVED.

6. RESERVED.

7. RESERVED.

8. RESERVED.

9. GENERAL

9.1 Survival. Section 0 ("Proprietary Rights”), Section 0 ("General”) and Section 0 ("Definitions") shall survive the termination or expiration of this Agreement.

9.2 Reserved.

9.3 Reserved.

9.4 Reserved.

9.5 Reserved.

9.6 Compliance with Applicable Laws. Ordering Activity, at its own expense, will comply with all applicable laws and regulations regarding its activities and obligations related to this Agreement.

9.7 Compliance with U.S. Export Laws. Ordering Activity acknowledges that the laws and regulations of the United States, including, without limitation, the United States Export Administration Act of 1979, as amended, may restrict the export and re-export of commodities and technical data of United States origin, including the Licensed Software in any medium. Ordering Activity agrees that it will not export or re-export the Licensed Software in any form without the appropriate United States and foreign government licenses. Additionally, use of the Licensed Software may include the routing of Content to one or more countries other than the United States; therefore Ordering Activity must ensure that the Content does not contain any data that is subject to export restrictions by the U.S. or other applicable governments.

9.8 Notice that there are third party licensors of software products embedded in, deployed or bundled with the Licensed Software.

9.9 Reserved.

9.10 Reserved.

9.11 Reserved.

9.12 Reserved.

9.13 Reserved.

9.14 Reserved.

9.15 Reserved.

9.16 Reserved.

9.17 Reserved.

9.18 Reserved.

9.19 Reserved.
10. DEFINITIONS.
10.1 “Agreement” means the terms and conditions herein.
10.2 “Content” means any all Ordering Activity sourcing materials and proposal components, data, files, and information collected, received, transmitted, interpreted or created by or through the Licensed Software, including, but not limited to, Ordering Activity designs, trademarks, logos, text, images, graphics, clips, and other material.
10.3 “Commencement Date” means the date on which the Licensed Software is first accessible by the Ordering Activity.
10.4 “Confidential Information” means any and all proprietary or non-public information disclosed by one party (the “Discloser”) to the other party (the “Recipient”) pursuant to this Agreement, which is in written, graphic, machine readable or other tangible forms, or oral, perceived or intangible information, which the Discloser designates as being confidential or proprietary or which, under the circumstances surrounding disclosure, the Recipient knows or has reason to know should be treated as confidential, including without limitation, the terms and conditions of this Agreement.
10.5 “Documentation” means standard manuals, data models, flow charts and other materials regarding the use of the Licensed Software and generally supplied by Contractor to Ordering Activity, whether in printed or electronic format, as well as complete or partial copies of the foregoing.
10.6 “Error” means a reproducible programming error or bug in the Licensed Software that results in the failure of the Licensed Software to comply substantially with the Documentation, including any known computer viruses, Trojan horses, worms, trap doors, time bombs, or other code designed to be harmful.
10.7 “Hosting Services” shall have the meaning set forth under the section with the heading Hosting Services.
10.8 “Hosting Term” means the period of time that Contractor through BravoSolution shall provide Hosting Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.
10.9 “Intellectual Property” means any and all trade secrets, patents, copyrights, trademarks, service marks, trade names, domain names, trade dress, URLs, brand features, know-how and similar rights of any type under the laws of any applicable governmental authority, including, without limitation, all applications and registrations relating to any of the foregoing.
10.11 “Inventions” means, collectively and without limitation, any and all inventions (of any type), ideas, discoveries, software, methods, developments, concepts, processes, improvements, and all other works of authorship, in whole or in part, whether or not patentable or copyrightable, conceived or made by BravoSolution or BravoSolution personnel pursuant to any this Agreement, any SOW or in the course of BravoSolution’s performance of any Services provided hereunder or regardless of any participation, assistance or cooperation by Ordering Activity or its personnel in connection therewith; provided, however, that Inventions shall exclude (i) the Licensed Software and other pre-existing BravoSolution Intellectual Property, (ii) any pre-existing intellectual property owned by Ordering Activity, and (iii) Ordering Activity’s Confidential Information.
10.12 “Licensed Software” means (i) the proprietary software product which is developed and owned or licensed by Contractor (including any Third Party Software incorporated therein) identified on an applicable Order Form (ii) any Documentation for the Licensed Software, and (iii) any Updates delivered to Ordering Activity pursuant to this Agreement.
10.13 “License Term” means the period of time the license of the Licensed Software granted hereby shall be in effect which shall commence upon the Commencement Date and continue for the period set forth on an applicable Order Form.
10.14 “Maintenance Services” shall have the meaning set forth in Section 3.1 hereof under the heading Support Terms below.
10.15 “Maintenance Term” shall mean the period of time Contractor shall render the Maintenance Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.
10.16 “Order Form” means one or more documents that are executed by the parties in connection with this Agreement.
10.17 “Services” means the software implementation, consulting and other professional services that may be provided by Contractor to Ordering Activity under this Agreement as described in one or more SOWs.
10.18 “Source Code” means the source code version of the Licensed Software.
10.19 “SOW” means a Statement of Work that is executed by the parties in connection with this Agreement. Each fully executed SOW shall be deemed an attachment to the Agreement and incorporated by reference hereto.
10.20 “Term” shall mean the period of time this Agreement shall be in effect, which shall commence upon the Effective Date and continue until the end date listed on the Order Form.
10.21 “Third Party Software” means certain software licensed by Contractor and included or embedded in the Licensed Software.
10.22 “Update” means (a) subsequent releases of the Licensed Software (not including any Third Party Software) that (i) add new features, functionality, and/or improved performance or, (ii) operate on new or other databases, operating systems, or client or server platforms; and (b) Error fixes, patches, workarounds, and maintenance releases; provided, however that Updates shall not include new or separate products. Contractor shall not provide any Updates to Third Party Software.

SUBSCRIPTION SOFTWARE LICENSE TERMS AND CONDITIONS

1. LICENSE.
1.1 Grant of Rights. Subject to all of these terms and conditions, Contractor grants to Ordering Activity a limited term, worldwide, non-exclusive, non-transferable, license (i) to access, use, display and perform the Licensed Software in object code form solely in accordance with the Documentation; (ii) for any web based functionality provided within the Licensed Software, to allow authorized participants to use the Licensed Software for the purpose of accessing and using the Licensed Software via a standard Internet Explorer web browser in the manner and to the extent provided by the Documentation; and (iii) to use the Documentation solely for the purposes of supporting Ordering Activity’s use of the Licensed Software in accordance with the terms of the Documentation. All rights not specifically granted shall be reserved to Contractor.
1.2 Restrictions. Ordering Activity shall not directly or indirectly (i) download, use or otherwise copy all or any portion of the Licensed Software or Documentation, except as stated in these terms; (ii) cause or permit the reverse engineering, modification, disassembly or decompilation of the Licensed Software or any portion thereof; (iii) modify or change the Licensed Software (except to configure the Licensed Software by means of the user-enabled features of the Licensed Software); (iv) create any derivative works of the Licensed Software or Documentation; (v) sublicense, rent, loan, lease, transfer, grant access to or otherwise distribute the Licensed Software to any other person or entity, except as stated otherwise in these terms; or (vi) use the Licensed Software or Documentation to provide services to third parties in a time-sharing, service bureau or application service provider arrangement.

2 LICENSED SOFTWARE WARRANTY.
2.1 Scope of Warranty. Contractor warrants that during the License Term the Licensed Software will be substantially free from Errors. In the event that the Ordering Activity determines that the Licensed Software contains Errors during such period, then Ordering Activity shall promptly report such Errors to Contractor in writing. Ordering activity shall report such Errors in the form reasonably requested by Contractor so as to enable Contractor to reproduce, verify, diagnose and correct each Error. Contractor’s sole obligation and Ordering Activity’s sole and exclusive remedy for Errors will be that Contractor will use commercially reasonable efforts to provide a correction or workaround for each Error in the Licensed Software reported by Ordering Activity to Contractor during the License Term.
2.2 Exclusion. Contractor will have no obligation under this Agreement with respect to Errors caused by (i) a malfunction of computer hardware or software other than the Licensed Software, (ii) any modification of or change to the Licensed Software that is made by Ordering Activity, or (iii) any combination, operation or use of the Licensed Software with systems or other software other than those described herein or the Documentation, or that may otherwise be approved by Contractor.

3 MAINTENANCE SERVICES.

GS-35F-0511T
https://www.immixgroup.com/contract-vehicles/gsa/lt-70/0511T/
3.1 Subject to Ordering Activity's payment of any Maintenance Fees set forth on the Order Form, during a Maintenance Term Contractor will provide the following Maintenance Services:

3.2 Updates for the Licensed Software as such Updates are made generally available by Contractor to Ordering Activity

3.3 Commercially reasonable efforts to effectuate prompt resolution of Errors in the Licensed Software in accordance with generally accepted industry standards ("Software Support") see the specific terms in the section below entitled Software Support. Contractor will communicate the problem status, and will be available to Contractor for ongoing clarifications.

3.4 Reserved.

3.5 Excluded Services. Except as otherwise provided herein, the Maintenance Services do not apply to or include: (i) Software Support required as a result of use or maintenance of Licensed Software other than in accordance with these terms herein; (ii) Software Support required as a result of database errors, content or other inputs; (iii) user education and training, except as described herein; (iv) correction of or assistance regarding problems caused by operator errors, including but not limited to the entry of incorrect data and improper procedures; (v) hardware problems experienced by Ordering Activity; or (vi) correction of errors attributable to software other than the Licensed Software (collectively "Excluded Services").

3.6 Reserved.

3.7 Contact Person(s). Ordering Activity shall appoint one (1) person as the principal point of contact for the communication of Errors to Contractor and for the receipt of Error fixes, work-arounds, patches and Updates, if any. Additionally, Ordering Activity may appoint another person as a back up for the principal contact. Contractor will provide an account manager who will service Ordering Activity and will monitor Ordering Activity’s support needs.

4. DISCLAIMER.


4.2 LIMITED WARRANTY FOR MAINTENANCE SERVICES

4.3 CONTRACTOR WARRANTS THAT THE MAINTENANCE SERVICES WILL BE (I) PERFORMED IN COMPLIANCE WITH ALL APPLICABLE LAWS, REGULATIONS AND RULES; (II) PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS AND (III) PERFORMED BY PERSONNEL QUALIFIED TO PERFORM THE TASKS NECESSARY FOR PROVIDING THE MAINTENANCE SERVICES. CONTRACTOR’S SOLE OBLIGATION, AND ORDERING ACTIVITY ORDERING ACTIVITY’S SOLE AND EXCLUSIVE REMEDY IN THE CASE OF A BREACH OF SUCH WARRANTIES WILL BE FOR CONTRACTOR TO RE-PERFORM SUCH MAINTENANCE SERVICES IN CONFORMANCE WITH SUCH APPLICABLE LAWS, GENERALLY ACCEPTED INDUSTRY STANDARDS OR USING QUALIFIED PERSONNEL, AS APPLICABLE. EXCEPT AS SET FORTH HEREIN, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE MAINTENANCE SERVICES FURNISHED OR OTHERWISE PROVIDED HEREBUNDER.

SOFTWARE SUPPORT TERMS

Contractor provides thorough 24x7x365 global Software Support, capable of handling all functional and technical problems.

Software Support is available to all users, buyers and suppliers.

Software Support contact information:

Domestic / Toll Free Phone: 1-877-528-2947
International / Toll Free Phone: +00-800-2255-4626
Email: support@bravosolution.com

Software Support Hours of Operation (Staffed):

24x5 staffed support: Sundays 2100 hours thru Fridays 2000 hours Eastern Prevailing Time

For urgent assistance after staffed support hours, support specialists carry cellular phones and will return calls within one hour of receipt.

Severities

<table>
<thead>
<tr>
<th>Priority</th>
<th>Severity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent</td>
<td>1</td>
<td>Time Critical system problem. BravoSolution production environment is inoperative and business is being impacted and no work can be done. No work around exists and use of Licensed Software functionality is materially compromised.</td>
</tr>
<tr>
<td>High</td>
<td>2</td>
<td>Time Critical system problem. BravoSolution production environment is adversely affected or is inoperative. Productivity is being compromised; work can be done but at full capacity. The problem is time critical and affecting more than 1 user.</td>
</tr>
<tr>
<td>Medium</td>
<td>3</td>
<td>Non-time critical system problem. BravoSolution production environment has encountered a non-critical problem or defect and / or questions have arisen on the use of the system. Affects at least 1 user. (Issues involving a single user where they are not able to use whole or part of the system).</td>
</tr>
<tr>
<td>Low</td>
<td>4</td>
<td>Non-time critical system problem. Low priority request with no system impact, such as enhancements, feature request or other non-critical problem. Non-time critical system problem affecting only one user.</td>
</tr>
</tbody>
</table>

Escalation

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
<th>Follow-up Response</th>
<th>Service Level/Resolution</th>
</tr>
</thead>
</table>

The Error will be routed to BravoSolution development resources within 30 minutes of Ordering Activity support notification and resolution efforts will be on going until the Error is resolved. The target time-to-resolution is 24 hours from the time Ordering Activity support notifies development of the Error.

The Error will be routed to BravoSolution development resources within 1 hour of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The target time-to-resolution is 1 business day from the time Ordering Activity support and development is notified of the Error.

The Error will be routed to development within 24 hours of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The repair may be scheduled for the next product release and is determined by Ordering Activity Support, Product Management and Development collectively.

Used for Documentation Errors, Enhancement Requests, and other minor issues or concerns.

### PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. SERVICES.
   1. Subject to these terms and conditions, Ordering Activity hereby engages Contractor to provide the Services. Unless otherwise specified in a SOW, the Services shall be performed at the facilities and location designated by Contractor. The parties shall each designate an account director or project manager who shall work together to manage the timely and successful implementation of the Services. Subject to these terms and the applicable SOW Contractor may subcontract some or all of the Services to be performed hereunder. In performing the Services, Contractor shall use commercially reasonable efforts to adhere to any timetables set forth in an SOW.
   2. Contractor warrants that the Services to be provided hereunder will be provided when and as required by this Agreement and shall be performed in a professional and workmanlike manner, in accordance with prevailing standards in the industry.
   3. Ordering activity shall assist Contractor in the performance of the Services by making available to Contractor on a timely basis all equipment, software, documentation, information, office and working space, Internet connectivity and personnel reasonably requested by Contractor from time to time. Ordering Activity shall also ensure that the Ordering Activity personnel so made available to Contractor are familiar with Ordering Activity requirements and have the expertise and capabilities necessary to so assist Contractor.
   4. Contractor warrants that the Services to be provided hereunder will be provided when and as required by this Agreement and shall be performed in a professional and workmanlike manner, in accordance with prevailing standards in the industry. BRAVOSOLUTION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

2. RESERVED.

3. RESERVED.

4. SERVICES WARRANTY.
   1. Contractor warrants that the Services to be provided hereunder will be provided when and as required by this Agreement and shall be performed in a professional and workmanlike manner, in accordance with prevailing standards in the industry. BRAVOSOLUTION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

### HOSTING TERMS AND CONDITIONS

1. HOSTING SERVICES.
   1. In consideration for Ordering Activity's payment of the Hosting Fee(s) set forth in the Order Form and commencing as of the date Contractor begins hosting the Licensed Software on BravoSolution controlled servers, Contractor shall provide the Hosting Services to Ordering Activity as specified herein.
   2. Hosting on BravoSolution Servers. BravoSolution shall make available one or more BravoSolution controlled servers for purposes of hosting the Licensed Software and the Content in accordance with the details set forth on an applicable Order Form. Contractor shall be responsible for installing the Licensed Software on such servers. At all times, BravoSolution or its subcontractor shall retain ownership of the BravoSolution servers, together with any associated equipment, hardware, software and other infrastructure components utilized by BravoSolution in providing services to Ordering Activity hereunder.

2. DISCLAIMER.
   1. By performing the Hosting Services, Contractor through BravoSolution is providing Ordering Activity with access to the Licensed Software via the Internet. Ordering Activity hereby acknowledges that (i) the Internet is not owned, operated, managed by or in any way affiliated with Contractor or BravoSolution
or any of its Affiliates; (ii) the Internet is a separate network of computers independent of Contractor and BravoSolution; (iii) Ordering Activity's use of the Internet is solely at Ordering Activity's own risk and is subject to all applicable laws, rules and regulations; and (iv) access to the Internet and the Licensed Software may be dependent on numerous factors, technologies and systems, many of which are beyond Contractor's authority and control and for which Contractor and BravoSolution shall not be liable hereunder. Ordering Activity agrees that Contractor shall not be held responsible in any way for outages or downtime resulting from causes beyond the control of Contractor or BravoSolution (e.g., telecommunications disruptions, packet loss un-attributable to a specific cause, or other internet outages of any kind).

2.2 This Agreement shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA Schedule Contract (e.g., clause 52.238-75—Price Reductions, clause 52.212-4(h)—Patent Indemnification, and GSAR 552.215-72—Price Adjustment—Failure to Provide Accurate Information.

3. Usage of the Licensed Software.

3.1 Contractor reserves the right to, from time to time, monitor the Licensed Software hosted on its servers only for the purposes of providing the services. Ordering Activity hereby acknowledges and agrees that Contractor and BravoSolution exercises no control whatsoever over the material transmitted or received on or through the Licensed Software by Ordering Activity. Ordering Activity shall ensure that all materials that transmitted or received on or through the Licensed Software comply with all applicable laws, rules and regulations. Without limiting the foregoing sentence, Ordering Activity hereby acknowledges that it will not violate any of the following policies respecting usage of the Licensed Software:

3.1.1 The transmission of spam (unsolicited commercial messages or communications in any form) on or through the Licensed Software is prohibited;

3.1.2 The transmission of any material on or through the Licensed Software in violation of any applicable laws or regulations is prohibited. This includes, but is not limited to, unauthorized transmission of copyrighted material, material protected by trade secret, or material that is otherwise deemed to be proprietary, as well as transmission of material that is legally judged to be threatening or obscene or that, in Contractor's reasonable business discretion, is deemed inappropriate or improper;

3.1.3 Intentionally omitting, deleting, forging or misrepresenting transmission information (including, without limitation, headers, return addressing information and Internet Protocol addresses) or taking any other actions intended to misrepresent or hide Ordering Activity's or any user's identity or contact information is prohibited.

3.2 Reserved.


4.1 Contractor represents and warrants that BravoSolution has implemented and maintains the Hosting Services at reputable third party Internet service providers and hosting facilities and that it shall use commercially reasonable technical, physical and procedural controls at least as rigorous as accepted industry practices to protect Ordering Activity's Content and Confidential Information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors to Ordering Activity's systems and Content, whether by accident or otherwise. The parties acknowledge, however, that Contractor and BravoSolution cannot, given the nature of current computer systems and networks, guarantee absolute security of the Licensed Software, or any activity occurring on or through it.

5. Performance.

5.1 Manner of Performance. Contractor may subcontract with third parties for the purpose of performance of the Hosting Services; provided, however, that Contractor shall remain responsible for ensuring its subcontractors comply with the terms and conditions of this Agreement. BravoSolution shall have the right to relocate the Licensed Software, the BravoSolution controlled servers or any of BravoSolution's operations at any time.

5.2 Cooperation and Assistance. Ordering Activity shall provide Contractor with reasonable cooperation and assistance in connection with performance of its obligations hereunder.

6. Ordering Activity Content.

6.1 Ownership. Contractor acknowledges and agrees that the Content and any intellectual property rights in or relating thereto are and shall continue to be the sole and exclusive property of Ordering Activity or its third-party licensors. Contractor acknowledges that it shall not, by virtue of this Agreement, acquire any ownership interest in the Content or any intellectual property rights in or relating thereto. Ordering Activity reserves all rights to the Content not expressly granted to Contractor hereunder. Ordering Activity represents and warrants that the Content shall not include any personally identifiable information.

License Grant. During the Hosting Services term, Ordering Activity hereby grants to BravoSolution through Contractor a non-exclusive, royalty-free, worldwide right and license to use, reproduce, display, perform and transmit the Content solely on or in conjunction with the Licensed Software, as contemplated hereunder, subject to and in accordance with the terms, conditions and provisions of this Agreement. Backups. Contractor shall make daily, incremental backups five times a week and one complete weekly backup of the Content. Should the need arise, Contractor shall use commercially reasonable efforts to reconstruct the Content from its backup.

Hosting Service Levels.

Availability and Maintenance. Contractor shall make the Licensed Software available for access twenty-four (24) hours per day, seven (7) days per week, excluding times for scheduled maintenance to be performed by or on behalf of Contractor ("Scheduled Maintenance"). Scheduled Maintenance shall take place between 2200 hours Friday and 1600 hours Sunday, Eastern Prevailing Time, or such other time as required.

Section - Service Levels.

Availability. Contractor will provide no less than 98% Total Time of Availability, which will be calculated on a monthly basis, as follows: Scheduled Maintenance will not be included as downtime in calculation of monthly availability. When the application is unavailable due to causes beyond Contractor's reasonable control, such as Internet outages, weather, acts of God, Ordering Activity system issues, or utility system outages, Contractor will strive to minimize any unavailability. Unscheduled and Emergency Maintenance will be included as downtime in monthly availability calculation. The availability of the system is calculated in the following way:

\[
\text{Total Time of Availability} = \text{Total Time (24/7) - Scheduled Maintenance - Uncontrollable Outages}
\]

% Availability = \((\text{Total Time of Availability} - \text{Unscheduled/Emergency Maintenance}) * 100 / \text{Total Time of Availability}\)

Maintenance Notifications. Contractor will communicate with the Ordering Activity's Designated Company Administrator(s) in the event that unscheduled maintenance or emergency maintenance is required. An email or phone call (including voice mail) will constitute sufficient notification of impending maintenance of any type. Unscheduled and Emergency maintenance windows may involve maintenance/repairs for which advance notification is not possible. Contractor will employ best efforts to notify client of Unscheduled and Emergency maintenance windows at the earliest possible time.

Maintenance Scheduling and duration. Total Scheduled Maintenance will not exceed 72 hours in any given month.

Section - Backups/Recovery Actions.

Redundant RAID for all data storage of Ordering Activity data.

Incremental file system backups nightly and shall perform full file system backups weekly.

Maintain journaling of database transactions.

Perform database exports nightly, prior to scheduled file system backups.

Perform cold database backups at regular intervals.

transport tapes of file systems and data backups off-site to a secure storage location on a weekly basis.

Section - Monitoring.

Application monitoring. BravoSolution shall employ a transaction monitoring system in order to verify application functionality for uptime reporting purposes and for the purpose of providing notification in the event of failures. BravoSolution shall check the application at least four times per hour for functionality.

System Level monitoring. BravoSolution shall employ a monitoring system in order to gather system level metrics that relate to utilization and performance.
1. **Scope.** This Rider and the attached *Brocade Communications Systems, Inc. ("Manufacturer")* product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms or the ‘Attachment A Terms’) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.**Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying Schedule Contract, and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

   l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

   m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 8301), since the GSA

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3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary; the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
1. DEFINITIONS.

a) “Hardware” which includes any Brocade hardware products, and any related documentation and manuals.

b) “Software” which includes any Brocade software licensed by Contractor to Ordering Activity in the form of any bundled firmware, or standalone software products, or other software, any backup copies of such software, and any related documentation and manuals provided therewith; and shall include any Upgrades (as defined below) or modified versions of such software provided to Ordering Activity by Contractor.

c) “Products” which includes, either an individual component of Brocade Hardware and/or Software or any combination thereof.

d) “Support” which includes maintenance and/or support services for the chosen Products.

2. SOFTWARE SPECIFIC TERMS.

2.1 LICENSE GRANT. EACH SOFTWARE PRODUCT MAY HAVE DIFFERENT LICENSING GRANTS AND RESTRICTIONS DEPENDING ON THE NATURE OF THE SOFTWARE. THE SPECIFIC LICENSING TERMS, MODEL AND RESTRICTIONS RELATED THERETO FOR EACH SOFTWARE PRODUCT SHALL BE SET FORTH IN THE RELEVANT CONTRACTOR QUOTATION. TO THE EXTENT THAT NO SUCH LICENSING TERMS EXIST, THE FOLLOWING LICENSE GRANT SHALL BE APPLICABLE: SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PAYMENT OF THE APPLICABLE LICENSE FEES, BROCADE AND ITS SUPPLIERS GRANT TO CUSTOMER A NON-EXCLUSIVE, NON-TRANSFERABLE LICENSE TO USE THE APPLICABLE SOFTWARE IN OBJECT CODE FORM SOLELY FOR INTERNAL PURPOSES AND SOLELY FOR THE PURPOSES SET FORTH IN THE BROCADE PRODUCT DOCUMENTATION.

2.2 ADDITIONAL SOFTWARE TERMS. THE FOLLOWING TERMS SHALL APPLY TO ALL SOFTWARE PROVIDED PURSUANT TO THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANY AND ALL SOFTWARE DELIVERED HEREUNDER IS LICENSED, NOT SOLD. ORDERING ACTIVITY SHALL HAVE NO RIGHT, AND ORDERING ACTIVITY SPECIFICALLY AGREES NOT TO, AND NOT TO PERMIT THIRD PARTIES TO: (I) MODIFY, ADAPT, CHANGE, ENHANCE OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE; (II) COPY, OR OTHERWISE REPRODUCE THE SOFTWARE IN WHOLE OR IN PART; (III) DECOMPILE, TRANSLATE, REVERSE ENGINEER, DISASSEMBLE OR OTHERWISE REDUCE THE SOFTWARE TO HUMAN-READABLE FORM; (IV) USE THE SOFTWARE ON ANY APPLIANCES/HARDWARE IN EXCESS OF THE NUMBER OF APPLIANCES/HARDWARE FOR WHICH IT IS LICENSED; (V) REMOVE, MODIFY OR OTHERWISE TAMPER WITH ANY NOTICE OR LEGEND ON ANY LABELING ON ANY PHYSICAL MEDIA CONTAINING THE SOFTWARE OR (VI) USE THE SOFTWARE FOR PROVIDING SERVICE BUREAU OR OTHER RELATED SERVICES TO THIRD PARTIES. ORDERING ACTIVITY’S RIGHTS IN THE SOFTWARE WILL BE LIMITED TO THOSE EXPRESSLY GRANTED HEREIN, AND ORDERING ACTIVITY SHALL HAVE NO RIGHT TO SUBLICENSE THE SOFTWARE. BEFORE DECOMPILING THE SOFTWARE FOR THE PURPOSES OF OBTAINING THE INTERFACE INFORMATION, ORDERING ACTIVITY WILL REQUEST CONTRACTOR THROUGH BROCADE TO PROVIDE IT WITH THIS INFORMATION. CONTRACTOR WILL CHARGE ORDERING ACTIVITY FOR ITS CORRESPONDING SERVICES AT THE APPLICABLE GSA RATES.

2.3 NUCLEAR, AVIATION OR LIFE SUPPORT APPLICATION. CONTRACTOR SPECIFICALLY DISCLAIMS LIABILITY FOR USE OF THE PRODUCTS IN CONNECTION WITH THE DESIGN, CONSTRUCTION, MAINTENANCE AND/OR OPERATION OF ANY (I) NUCLEAR FACILITY, (II) AIRCRAFT, AIRCRAFT COMMUNICATION OR AIRCRAFT GROUND SUPPORT SYSTEM, OR (III) SAFETY OR HEALTH CARE CONTROL SYSTEM, INCLUDING WITHOUT LIMITATION, LIFE SUPPORT SYSTEM.

2.4 OPEN SOURCE SOFTWARE. CERTAIN COMPONENTS OF THE SOFTWARE, INCLUDING SOFTWARE DESIGNED TO INTEROPERATE WITH THE SOFTWARE, MAY INCORPORATE OR BE BASED ON “OPEN SOURCE” SOFTWARE. SUCH SOFTWARE IS SUBJECT TO THE APPLICABLE OPEN SOURCE LICENSE (E.G., GNU GENERAL PUBLIC LICENSE) AND IS NOT SUBJECT TO THIS AGREEMENT. TO OBTAIN A COPY OF THE SOURCE CODE AND APPLICABLE LICENSING TERMS FOR THE OPEN SOURCE SOFTWARE USED BY BROCADE, PLEASE SEE HTTP://WWW.BROCADE.COM/SUPPORT/OSCD.JSP, AS MAY BE AMENDED FROM TIME TO TIME. CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES WITH RESPECT TO SUCH OPEN SOURCE SOFTWARE.

2.5 RESTRICTED RIGHTS. THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION PROVIDED UNDER THIS AGREEMENT INCORPORATE COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE, AND IS IN ALL RESPECTS PROPRIETARY PROPERTY BELONGING SOLELY TO CONTRACTOR OR ITS LICENSORS. IF ORDERING ACTIVITY IS ACQUIRING THE SOFTWARE ON BEHALF OF ANY PART OF THE UNITED STATES GOVERNMENT, THE FOLLOWING PROVISIONS APPLY: THE OBJECT CODE AND ACCOMPANYING DOCUMENTATION ARE DEEMED TO BE “COMMERCIAL COMPUTER SOFTWARE” AND “COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION”, RESPECTIVELY, PURSUANT TO DFAR SECTION 227.7202 AND FAR 12.212(B), AS APPLICABLE. ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF THE OBJECT CODE AND/OR THE ACCOMPANYING DOCUMENTATION BY THE U.S. GOVERNMENT OR ANY OF ITS AGENCIES SHALL BE GOVERNED SOLELY BY THE TERMS OF THIS AGREEMENT AND SHALL BE PROHIBITED EXCEPT TO THE EXTENT EXPRESSLY PERMITTED BY THE TERMS OF THIS AGREEMENT. ANY TECHNICAL DATA PROVIDED THAT IS NOT COVERED BY THE ABOVE PROVISIONS IS DEEMED TO BE “TECHNICAL DATA COMMERCIAL ITEMS” PURSUANT TO DFAR SECTION 225.227.7015(A), ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF SUCH TECHNICAL DATA SHALL BE GOVERNED BY THE TERMS OF DFAR SECTION 225.227.7015(B).
**2.6 AUTHORIZED LICENSES FOR USERS.** ORDERING ACTIVITY'S USE OF THE SOFTWARE AND THE APPLICABLE FEES RELATED THERETO ARE BASED UPON A SPECIFIC LICENSING MODEL, E.G., CONCURRENT USERS, NAMED USERS, PER TERABYTE USED, OR RIGHTS LIMITED TO SPECIFIC NETWORKING SWITCHES, SERVERS OR PLATFORMS (“AUTHORIZED LICENSES”). THE APPLICABLE LICENSING MODEL AND THE NUMBER OF AUTHORIZED LICENSES WILL BE SET FORTH IN CONTRACTOR'S QUOTATION OR IN THE BROCAD DOCUMENTATION FOR SUCH SOFTWARE. FOR CERTAIN SOFTWARE, ORDERING ACTIVITY MAY HAVE THE RIGHT TO INCREASE THE NUMBER OF AUTHORIZED LICENSES FOR THE APPLICABLE SOFTWARE PROVIDED THAT ORDERING ACTIVITY PAYS CONTRACTOR THE ADDITIONAL LICENSE AND SUPPORT FEES, AND SUCH FEES SHALL BE PAID TO CONTRACTOR PRIOR TO INITIATING SUCH INCREASES. ORDERING ACTIVITY AGREES TO WORK IN GOOD FAITH WITH CONTRACTOR TO ACCURATELY COUNT THE AUTHORIZED LICENSES. ORDERING ACTIVITY CONSENTS TO AND SHALL TAKE ALL ACTIONS NECESSARY FOR THE INSTALLATION AND USE OF CERTAIN USER AUTHORIZATION SOFTWARE TO VERIFY THE LOCATION AND NUMBER OF ORDERING ACTIVITY'S AUTHORIZED LICENSES.

3. SUPPORT OBLIGATIONS.

3.1 GENERAL SUPPORT OBLIGATIONS.

A) TECHNICAL SUPPORT. PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES AND SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW, CONTRACTOR, THROUGH BROCAD, WILL PROVIDE REMEDIAL TELEPHONE, EMAIL, ONLINE AND/OR ON-SITE ASSISTANCE FOR THE PRODUCTS LISTED ON A CONTRACTOR SUPPORT QUOTATION (“COVERED HARDWARE” AND “COVERED SOFTWARE”, RESPECTIVELY OR “COVERED PRODUCT(S)” COLLECTIVELY) BASED ON THE APPLICABLE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY. WHENEVER ORDERING ACTIVITY SUBMITS A SUPPORT ISSUE TO CONTRACTOR, THROUGH BROCAD RELATD TO THE COVERED PRODUCTS (“PROBLEM”), CONTRACTOR, THROUGH BROCAD, WILL CLASSIFY THE PROBLEM ACCORDING TO THE ORDERING ACTIVITY “SEVERITY” LEVEL THAT DEFINES THE PROBLEM, BASED ON THE ORDERING ACTIVITY SEVERITY LEVEL DESCRIPTIONS LOCATED IN THE SUPPORT PLAN POLICIES DOCUMENT AT BROCAD’S WEBSITE, WHICH DOCUMENT MAY BE UPDATED FROM TIME TO TIME IN BROCAD’S DISCRETION. ADDITIONAL CHARGES MAY APPLY IF ORDERING ACTIVITY CONTACTS BROCAD WHEN IT IS LATER DETERMINED THAT THE CAUSE WAS NOT RELATED TO THE COVERED PRODUCTS. CONTRACTOR, THROUGH BROCAD, WILL ONLY PROVIDE SUPPORT FOR THE BASELINE LICENSED SOFTWARE, AND WILL NOT SUPPORT ANY CUSTOMIZATIONS OR UNIQUE IMPLEMENTATIONS OF THE SOFTWARE UNDER ITS GENERAL SUPPORT OBLIGATIONS, AND ANY SUCH ASSISTANCE WILL BE PROVIDED ON A TIME AND MATERIAL BASIS.

B) SUPPORT TERM AND RENEWAL. THE INITIAL TERM APPLICABLE TO EACH SUPPORT QUOTATION WILL BEGIN (I) IN THE CASE OF NEWLY ACQUIRED PRODUCTS, ON THE DATE OF SHIPMENT; OR (II) IN THE CASE OF PREVIOUSLY SHIPPED PRODUCTS, ON THE EFFECTIVE DATE SPECIFIED ON CONTRACTOR’S QUOTATION, AND SUCH SERVICES SHALL CONTINUE THROUGH THE TERM STATED ON THE QUOTATION. THEREAFTER, SUCH SUPPORT WILL ONLY BE RENEWED BASED ON CONTRACTOR'S RENEWAL QUOTATION TO ORDERING ACTIVITY AND RECEIPT OF ORDERING ACTIVITY'S CORRESPONDING PURCHASE ORDER. FOR THE FIRST RENEWAL PERIOD, SUPPORT MAY BE RENEWED FOR THE NEXT TERM AT THE SAME RATE AS THE INITIAL SUPPORT TERM.

C) COVERED PRODUCTS. PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCAD, WILL PROVIDE SUPPORT FOR THE COVERED PRODUCTS, AS DESCRIBED IN A CONTRACTOR QUOTATION. ANY CHANGES TO THE COVERED PRODUCTS SHOULD BE REPORTED TO CONTRACTOR, THROUGH BROCAD, PRIOR TO MAKING ANY SUCH CHANGES, AND SUCH CHANGES COULD RESULT IN MODIFICATIONS TO CONTRACTOR’S OBLIGATIONS AND THE APPLICABLE SUPPORT FEES. ORDERING ACTIVITY IS RESPONSIBLE FOR ACTIVATING THE SUPPORT PLAN FOR ALL COVERED PRODUCTS, INCLUDING CHANGES MADE TO THE COVERED PRODUCT LIST, VIA BROCAD’S WEBSITE UNDER “SUPPORT”.

D) RECERTIFICATION OF PRODUCTS. FOR ANY PRODUCTS WHERE ORDERING ACTIVITY REQUESTS SUPPORT ON PRODUCTS PREVIOUSLY SUPPORTED BY ANOTHER PARTY OR FOR WHICH SUPPORT SERVICES HAVE Lapsed, CONTRACTOR MAY REQUIRE THAT THE PRODUCT BE RECERTIFIED. UPON RECEIPT OF PURCHASE ORDER, CONTRACTOR, THROUGH BROCAD, WILL COMMENCE MAINTENANCE IN ACCORDANCE WITH THE START DATE ON THE QUOTATION AND WILL SCHEDULE THE RECERTIFICATION ACTIVITY. SHOULD A REQUEST FOR REMEDIAL MAINTENANCE BE RECEIVED PRIOR TO THE COMPLETION OF THE RECERTIFICATION, SUCH SERVICE MAY BE DELAYED (INCLUDING RELATED RESPONSE TIME COMMITMENTS) UNTIL SUCH TIME AS THE RECERTIFICATION IS COMPLETED. SHOULD CONTRACTOR, THROUGH BROCAD DEEM THAT THE PRODUCTS ARE UNSUPPORTABLE, ORDERING ACTIVITY WILL BE NOTIFIED ACCORDINGLY AND A CREDIT OR REFUND PROVIDED FOR ANY APPLICABLE PREPAID SUPPORT FEES.

E) THIRD PARTY PRODUCT INTEROPERABILITY. DUE TO INTEROPERABILITY REQUIREMENTS, ORDERING ACTIVITY AGREES THAT THE USE OF ANY THIRD PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO, OPTICAL TRANSCIEVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY BROCAD MAY CAUSE ERRORS IN THE OPERATION OF THE PRODUCTS OR MAY CAUSE ADDITIONAL RESOLUTION TIME FOR CONTRACTOR, THROUGH BROCAD UNDER ITS SUPPORT OBLIGATIONS HEREUNDER. ORDERING ACTIVITY ACKNOWLEDGES THAT USE OF ANY SUCH THIRD PARTY PRODUCTS SHALL REQUIRE CONTRACTOR FROM THE PERFORMANCE OF CONTRACTOR’S SUPPORT OBLIGATIONS RELATED THERETO, AND ORDERING ACTIVITY AGREES TO PAY CONTRACTOR FOR ANY TIME SPENT DIAGNOSING SUCH PROBLEMS WHICH SHALL BE BILLED AT CONTRACTOR’S HOURLY GSA RATE. CONTRACTOR MAY BE PREPARED IN ITS DISCRETION TO PROVIDE ADDITIONAL PROFESSIONAL SERVICES TO RESOLVE ANY SUCH PROBLEMS IN SUCH CIRCUMSTANCES, BUT SHALL NOT BE OBLIGED TO DO SO.

F) CANCELLATION. ORDERING ACTIVITY MAY CANCEL SUPPORT SERVICES AT ANY TIME ON THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO CONTRACTOR, IN SUCH EVENT, CONTRACTOR, THROUGH BROCAD, SHALL REFUND ANY SUPPORT FEES PREPAID FOR THE PERIOD AFTER SUCH TERMINATION, LESS ANY PREPAYMENT OR MULTI-YEAR DISCOUNT TO WHICH ORDERING ACTIVITY IS NO LONGER ENTITLED. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO PREMIER AND PREMIER PLUS SUPPORT SERVICES, CHARGES APPLICABLE TO THE SUPPORT ACCOUNT MANAGER (“SAM”) AND ON-SITE ENGINEER (“OSE”) ARE NON-REFUNDABLE IN THE EVENT THAT SUPPORT SERVICES ARE CANCELLED BY ORDERING ACTIVITY.

3.2 SOFTWARE SPECIFIC SUPPORT TERMS.
A) UPGRADES. SUBJECT TO PAYMENT OF THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL USE REASONABLE EFFORTS TO PROVIDE A PATCH FOR ANY MATERIAL DEVIATION BETWEEN THE CURRENT RELEASE OF THE COVERED SOFTWARE AND ITS SPECIFICATIONS WHICH IS REPORTED BY ORDERING ACTIVITY TO BROCADE AND IS REPRODUCIBLE BY BROCADE. ADDITIONALLY, CONTRACTOR, THROUGH BROCADE, MAY PROVIDE ORDERING ACTIVITY WITH MAINTENANCE RELEASES, FEATURE RELEASES AND PLATFORM RELEASES OF THE COVERED SOFTWARE, ON AN “IF AND WHEN AVAILABLE” BASIS, THAT BROCADE GENERALLY MAKES AVAILABLE TO OTHER BROCADE CUSTOMERS AT NO CHARGE BEYOND THE FEES FOR SUPPORT. AS USED HEREIN: (I) “PLATFORM RELEASE” MEANS A PLATFORM, OPERATING SYSTEM OR SOFTWARE ARCHITECTURE CHANGE AND/OR THE ADDITION OF A MAJOR NEW APPLICATION OR FUNCTION; (II) “FEATURE RELEASE” MEANS A MAJOR NEW FEATURE OR AN ENHANCEMENT IN OPERATING PERFORMANCE THAT DOES NOT ALTER THE BASIC FUNCTIONALITY; (III) “MAINTENANCE RELEASE” MEANS A REGULARLY SCHEDULED UPDATE WHICH MAY INCLUDE DEFECT FIXES AND LIMITED PLATFORM-SPECIFIC IMPROVEMENTS; AND (IV) “PATCH” MEANS A TEMPORARY SOLUTION TO A ORDERING ACTIVITY-REPORTED CRITICAL DEFECT (ALL COLLECTIVELY REFERRED TO AS “UPGRADES”).

B) LICENSING TERMS. ALL UPGRADES ARE SUBJECT TO THE ORIGINAL LICENSE TERMS AND CONDITIONS FOR THE BASELINE SOFTWARE. SUPPORT RELATED TO SUCH BASELINE SOFTWARE AND ALL UPGRADES WILL BE SUBJECT TO THE ADDITIONAL TERMS AND CONDITIONS CONTAINED IN THIS ATTACHMENT A.

C) SOFTWARE SUPPORT POLICY. CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SOFTWARE SUPPORT FOR THE THEN CURRENT FEATURE RELEASE AND THE GREATER OF (I) THE TWO IMMEDIATELY PRECEDING FEATURE RELEASES, OR (II) ALL FEATURE RELEASES MADE AVAILABLE WITHIN THE PRECEDING 12 MONTHS. AS A GENERAL RULE, UPGRADES MUST BE INSTALLED SEQUENTIALLY THROUGH ALL FEATURE RELEASES AND PLATFORM RELEASES (E.G., TO UPGRADE FROM RELEASE 5.1 TO 6.0, ALL FEATURE RELEASES AND PLATFORM RELEASES AFTER 5.1 WILL BE ADDED AS PART OF THE UPGRADE PROCESS).

D) CONDITIONS AND LIMITATIONS OF SOFTWARE SUPPORT. SUPPORT SERVICES DOES NOT COVER AND CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR PROBLEMS ARISING OUT OF ORDERING ACTIVITY’S FAILURE TO IMPLEMENT ALL UPGRADES ISSUED HEREUNDER, CHANGES TO THE COMPUTING ENVIRONMENT, ALTERATIONS OR MODIFICATIONS OF THE SOFTWARE PERFORMED BY PARTIES OTHER THAN BROCADE, ACCIDENT, NEGLIGENCE, OR MISUSE OF THE SOFTWARE. ADDITIONAL INFORMATION RELATED TO THE VARIOUS SOFTWARE PRODUCTS, INCLUDING WITHOUT LIMITATION ADDITIONAL SUPPORT SERVICE DESCRIPTIONS, ESCALATION PROCEDURES, PRODUCT DEVELOPMENT GUIDELINES, AND OTHER GENERAL PROCEDURES MAY BE INCLUDED ON THE BROCADE SITE, AS MAY BE AMENDED FROM TIME TO TIME.

3.3 HARDWARE SPECIFIC SUPPORT TERMS.

A) GENERAL DESCRIPTION. FOR ALL PROBLEMS IDENTIFIED BY BROCADE RELATED TO COVERED HARDWARE AND PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE HARDWARE SUPPORT IN ACCORDANCE WITH THE TERMS HEREIN AND IN ACCORDANCE WITH THE SUPPORT PLANS AT BROCADE’S WEBSITE, WHICH MAY BE UPDATED FROM TIME TO TIME IN BROCADE’S DISCRETION. CONTRACTOR MAY REQUIRE UP TO THIRTY (30) DAYS FROM RECEIPT OF ORDER TO PROVIDE SPARES AND ONSITE LABOR REQUIRED TO FULFILL THE SUPPORT PLAN SELECTED.

B) MALFUNCTIONING COVERED HARDWARE. IF ANY COVERED HARDWARE MALFUNCTIONS, CONTRACTOR, THROUGH BROCADE, WILL REPAIR OR REPLACE SUCH COVERED HARDWARE. OR ANY PARTS OF THE COVERED HARDWARE AS PROVIDED IN THE APPLICABLE SUPPORT PLAN. ANY ITEM CONTRACTOR REPLACES WILL BECOME BROCADE’S PROPERTY, AND THE REPLACEMENT ITEM WILL BECOME ORDERING ACTIVITY’S PROPERTY. THE REPLACEMENT ITEMS MAY NOT BE NEW, BUT WILL BE IN GOOD WORKING ORDER AND AT LEAST FUNCTIONALLY EQUIVALENT TO THE ITEM REPLACED. BEFORE CONTRACTOR EXCHANGES ANY HARDWARE, ORDERING ACTIVITY MUST REMOVE ALL FEATURES, PARTS, OPTIONS, ALTERATIONS, ENCUMBRANCES, AND ATTACHMENTS NOT PROVIDED BY BROCADE. ORDERING ACTIVITY ALSO AGREES TO ENSURE THAT THE ITEM IS FREE OF ANY LEGAL OBLIGATIONS, ENCUMBRANCES, OR RESTRICTIONS THAT COULD PREVENT ITS EXCHANGE. BASED ON THE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY, ORDERING ACTIVITY MAY BE RESPONSIBLE FOR ONE-WAY SHIPPING COSTS RELATED TO ANY SUCH RETURNS.

C) ORDERING ACTIVITY RESPONSIBILITIES. FOR USDX AND EDGE PRODUCTS, ORDERING ACTIVITY IS RESPONSIBLE FOR PROVIDING REMOTE ACCESS VIA BROCADE-PROVIDED DIAL-IN MODEM TO ENABLE REMOTE DIAGNOSTICS, TROUBLESHOOTING AND SOFTWARE UPGRADES.

D) EXCLUSIONS. SUPPORT DOES NOT COVER SERVICING OF COVERED HARDWARE DAMAGED BY MISUSE, ACCIDENT, ACT OF GOD, IMPROPER INSTALLATION, MISAPPLICATION, MODIFICATION, UNSUITABLE PHYSICAL OR OPERATING ENVIRONMENT, ABNORMAL PHYSICAL OR ELECTRICAL STRESS, IMPROPER MAINTENANCE (UNLESS BY BROCADE), REMOVAL OR ALTERATION OF SWITCH OR PART IDENTIFICATION LABELS, OR FAILURE CAUSED BY A PRODUCT FOR WHICH CONTRACTOR IS NOT RESPONSIBLE. CONTRACTOR MAY CHARGE ORDERING ACTIVITY SEPARATELY FOR ANY SERVICES PROVIDED BY BROCADE RELATED TO SUCH DAMAGED HARDWARE.

4. HARDWARE SPECIFIC TERMS.

4.1 RMA PROCEDURE. ORDERING ACTIVITY SHALL NOT RETURN ANY PRODUCT, WHICH ORDERING ACTIVITY DETERMINES TO BE DEFECTIVE, WITHOUT A RETURN MATERIAL AUTHORIZATION NUMBER (“RMA”) ISSUED BY BROCADE. FOR EVERY PRODUCT RETURNED BY ORDERING ACTIVITY SUBJECT TO THIS AGREEMENT: (A) ORDERING ACTIVITY MUST PROVIDE CONTRACTOR WITH THE SERIAL NUMBER OF THE PRODUCT; (B) CONTRACTOR, THROUGH BROCADE, SHALL VERIFY WHETHER OR NOT PRODUCT IS WITHIN THE APPLICABLE WARRANTY PERIOD OR ORDERING ACTIVITY IS OTHERWISE ENTITLED TO REPAIR OR REPLACEMENT OF PRODUCT WITHOUT CHARGE; (C) (I) IF ORDERING ACTIVITY IS ENTITLED TO RETURN PRODUCT FOR REPAIR/REPLACEMENT WITHOUT CHARGE, THEN BROCADE SHALL ISSUE TO ORDERING ACTIVITY AN RMA; AND (II) IF PRODUCT IS NOT UNDER WARRANTY, THEN ORDERING ACTIVITY MUST ISSUE A PURCHASE ORDER FOR SERVICE TO CONTRACTOR, THROUGH BROCADE, UPON RECEIPT OF WHICH BROCADE WILL ISSUE AN RMA TO ORDERING ACTIVITY; (D) ORDERING ACTIVITY SHALL SHIP THE PRODUCT TOGETHER WITH THE RMA INFORMATION TO THE ADDRESS PROVIDED BY BROCADE; AND (E) CONTRACTOR, THROUGH BROCADE, SHALL REPAIR OR REPLACE PRODUCT AND WILL PAY ACTUALSHIPMENT COSTS FOR RETURN OF PRODUCT. ORDERING ACTIVITY AGREES TO PAY CONTRACTOR, THROUGH BROCADE, TO NOT BE DEFECTIVE. THE REPAIR LEAD TIME IS THIRTY (30) DAYS FROM RECEIPT OF THE RETURNED PRODUCT AT BROCADE’S REPAIR FACILITY.

5. WARRANTIES AND DISCLAIMERS.

5.1 SOFTWARE WARRANTY. CONTRACTOR WARRANTS TO ORDERING ACTIVITY FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF SHIPMENT TO ORDERING ACTIVITY THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED LICENSING TERMS.
5.2 HARDWARE WARRANTY. CONTRACTOR WARRANTS TO ORDERING ACTIVITY, FOR THE WARRANTY PERIOD SET FORTH IN CONTRACTOR'S QUOTATION FOR THE APPLICABLE HARDWARE THAT EACH UNIT OF HARDWARE SHALL BE FREE OF DEFECTS IN ANY MATERIAL RESPECT IN MATERIALS AND Workmanship AND SHALL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS FOR SUCH HARDWARE. THIS WARRANTY DOES NOT APPLY TO THOSE UNITS OF HARDWARE WHICH: (i) HAVE BEEN SERVICED OR ALTERED, EXCEPT AS EXPRESSLY AUTHORIZED BY CONTRACTOR; (ii) HAVE NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH ANY INSTALLATION, HANDLING, MAINTENANCE OR OPERATION INSTRUCTIONS SUPPLIED BY CONTRACTOR; (iii) HAVE BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE OR ACCIDENT; (iv) HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE OR TRANSPORTING; OR (v) INTEROPERATE WITH THIRD PARTY PRODUCTS, SUCH AS OPTICAL TRANSCIEVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY CONTRACTOR. CONTRACTOR'S SOLE OBLIGATION AND ORDERING ACTIVITY'S EXCLUSIVE REMEDY FOR FAILURE OF THE HARDWARE(S) TO CONFORM TO THE WARRANTY SET FORTH IN THIS SECTION SHALL BE, AT CONTRACTOR'S EXPENSE, TO REPAIR/REPLACE SUCH DEFECTIVE HARDWARE WITHIN THE NORMAL MANUFACTURING LEAD TIMES APPLICABLE TO SUCH HARDWARE AND TO RETURN SUCH REPAIRED HARDWARE TO ORDERING ACTIVITY OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. "SPECIFICATION" MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT.

5.3 NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS, AND SUPPORT ARE DELIVERED "AS IS" AND NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, ANY RELATED DOCUMENTATION OR SERVICES.

6. PROPRIETARY RIGHTS. BROCADE OWNS AND RETAINS FOR ITSELF ALL RIGHT, TITLE AND INTEREST IN AND TO ALL DESIGNS, ENGINEERING DETAILS, AND OTHER DATA AND MATERIALS PERTAINING TO THE PRODUCTS OR, SUPPORT SUPPLIED BY CONTRACTOR AND TO ALL DISCOVERIES, INVENTIONS, PATENTS AND OTHER PROPRIETARY RIGHTS ARISING OUT OF THE WORK DONE BY CONTRACTOR, THROUGH BROCADE, IN CONNECTION WITH THE PRODUCTS AND SUPPORT OR WITH ANY AND ALL PRODUCTS DEVELOPED BY BROCADE AS A RESULT THEREOF, INCLUDING THE SOLE RIGHT TO MANUFACTURE ANY AND ALL SUCH PRODUCTS. ORDERING ACTIVITY WARRANTIES THAT IT WILL NOT DIVULGE, DISCLOSE, OR IN ANY WAY DISTRIBUTE OR MAKE USE OF SUCH BROCADE PRODUCTS OR RELATED INFORMATION, AND THAT IT WILL NOT MANUFACTURE OR ENGAGE TO HAVE MANUFACTURED SUCH PRODUCTS.

6.1 NO IMPLIED LICENSES. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS CONFERRING ANY RIGHTS BY IMPLICATION, OR OTHERWISE, UNDER ANY INTELLECTUAL PROPERTY RIGHT, OTHER THAN THE RIGHTS EXPRESSLY GRANTED IN THIS AGREEMENT.

Brocade Professional Services Terms and Conditions

1. Working Hours. Except for any Professional Services with explicitly stated extended work hours, all Professional Services shall be performed during normal business hours. Ordering Activity (herein also referred to as “Customer”) shall inform Contractor through Brocade in advance if any off-shift services will be required.

2. Facilities. Professional Services may be performed on Customer’s site. Customer agrees to provide the facilities reasonably necessary for Brocade to perform the Professional Services, including a safe and suitable workspace for the Brocade employees or contractors performing the Professional Services, as well as appropriate access to Product and third party hardware, software and/or services. For security and safety reasons, a Customer representative shall be available on-site whenever Brocade employees or contractors are performing the Professional Services at such facilities.

3. Prerequisites. Prior to the commencement of the Professional Services, Customer agrees to take all prerequisite steps identified by Contractor through Brocade, including without limitation, (i) ensuring that all manufacturers’ labels (such as serial numbers) are in place, accessible, and legible, (ii) obtaining authorization to have Brocade service a Product that Customer does not own, (iii) licensing, purchasing and/or paying licensing fees and installation charges, and obtaining a license or appropriate permission for Brocade to access and use such software, and (iv) testing all hardware and software necessary to perform the Professional Services, and all such hardware and software documentation shall be made available to Brocade, and (v) any other prerequisites identified by Brocade. Customer acknowledges that any failure to perform the prerequisites may result in voiding the warranty, a delay in performance or additional costs for the particular service. IT IS CUSTOMER’S RESPONSIBILITY TO ENSURE THAT CUSTOMER HAS COMPLETE BACKUPS OF ALL DATA PRIOR TO COMMENCEMENT OF ANY SERVICES. CONTRACTOR OR BROCADE ASSUMES NO RESPONSIBILITY FOR LOST DATA. Contractor or Brocade will not be responsible for Customer’s failure to obtain such permissions and licenses.

4. Scheduling Professional Services. Promptly following receipt of Customer’s order, Contractor through Brocade shall contact Customer’s representative to schedule the Professional Services. All Professional Services must be scheduled to begin within one hundred eighty (180) days of the date of the order.

5. Cancellation. Unless otherwise quoted by Contractor, Customer may cancel the Professional Services at any time on thirty (30) days prior written notice to Contractor through Brocade. In such event, Customer shall pay Contractor for all Professional Services performed through the date of termination and reimburse Contractor for all expenses incurred and billable pursuant to the Customer’s order. Contractor will credit or refund any prepaid fees applicable to cancelled Professional Services not performed on the date of termination, less any volume or other discount taken to which Customer is no longer entitled.

6. Rights in the Software Deliverables. The following terms shall apply for any Software deliverables provided by Contractor through Brocade as part of the Professional Services. Subject to the terms and conditions of this Attachment A and payment of the applicable license fees, Brocade and its third party licensor, if applicable, grant to Customer a non-exclusive, non-transferable license to use the applicable Software deliverables in object code form solely for internal purposes and solely the purposes set forth in the relevant Brocade product documentation. Customer shall have no right to sublicense such Software deliverables or any rights related thereto.
7. **Acceptance Procedures.** Upon completion of the Professional Services, Customer shall have ten (10) days (or such other time period specified in the quotation) following the date of delivery to evaluate such Professional Services. On or before the tenth (10th) day following such delivery, Customer shall provide Contractor with either (i) a written acceptance of the Professional Services; or (ii) written notice of rejection describing in detail the deficiency that is the basis for the rejection. A deficiency is a material non-conformity of the Professional Services to the acceptance criteria stated in the applicable Contractor’s quotation or in the absence of such criteria, a material non-conformity to the description of the Professional Services set forth in the quotation. In the event that Customer rejects the Professional Services in accordance with the afore-described procedure, Contractor will use diligent efforts to correct the deficiency promptly. The Professional Services and any associated deliverables that are re-performed or re-delivered shall be subject to Customer’s acceptance in accordance with this provision. In the event Customer fails to accept or reject the Professional Services within 10 days after Contractor’s completion of the applicable Professional Services, or accept or reject re-performed Professional Services within 10 days after Contractor’s completion of the applicable Professional Services, the Professional Services shall be deemed accepted by Customer, and Customer shall have no further right to reject the Professional Services.

8. **Right to Instruct.** Brocade consultants deployed to perform any services for Customer under this Attachment A are under the exclusive supervision and instruction of Brocade. Brocade reserves the exclusive right to instruct its consultants, in particular with respect to work hours and the scope and manner of services to be performed under this Attachment A. Customer has no rights to instruct Brocade’s consultants whatsoever.

9. **Professional Services Warranty.** Contractor warrants for a period of thirty (30) days: (i) following the completion of the Professional Services, in the case where no acceptance procedure is applicable, and (ii) following acceptance of the Professional Services, otherwise, that all Professional Services will be performed in a professional and workman-like manner by appropriately trained personnel, using generally accepted industry standards and practices. As Contractor’s liability and Customer’s remedy for a breach of this warranty, if the Professional Services are not provided as warranted, Contractor will, at its sole discretion, either: (i) correct any material non-conformances in the Professional Services deliverables; (ii) re-perform the Professional Services; or (iii) credit Customer for the amount paid for the nonconforming Professional Services. This warranty does not apply to the extent any non-conformity relates to (i) any specifications, code, diagnostic or other tools, or any other materials provided by Customer; (ii) the integration, operation, modification, or use of the Professional Services or any deliverables in any manner not authorized by Contractor; and (iii) any changes to the network environment after the services were rendered. EXCEPT AS EXPRESSLY SET FORTH IN THIS ATTACHMENT A, THE PROFESSIONAL SERVICES ARE DELIVERED “AS IS” AND NEITHER CONTRACTOR NOR ITS THIRD PARTY SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10. **Proprietary Rights.** Brocade owns and retains for itself all right, title and interest in and to all designs, engineering details, and other data and materials pertaining to the Professional Services supplied by Brocade and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Brocade in connection with the Professional Services or with any and all products developed by Brocade as a result thereof, including the sole right to manufacture any and all such Products; however, Customer shall have perpetual unlimited rights to all designs, engineering details and other data and materials pertaining to the Professional Services. Customer warrants that it will not divulge, disclose, or in any way distribute or make use of such Brocade Professional Services or related information, and that it will not manufacture or engage to have manufactured such Products.

11. **Security and Conduct.** Customer shall maintain industry standard security policies, practices and procedures, and shall comply with all applicable laws and regulations and with all applicable health, safety and security rules, programs and procedures. Contractor and Brocade shall comply with all such Customer security policies, practices and procedures to the extent applicable and to the extent Brocade is made aware of such policies, practices and procedures.

12. **Background Checks and Drug Free Workplace.** Contractor through Brocade has certain procedures in place to perform background checks and to ensure a drug free workplace for its employees and contractors performing Professional Services. Upon request, Brocade will provide information related to such procedures. Customer acknowledges that certain jurisdictions do not allow or limit such checks, and Brocade will not perform such checks in these jurisdictions or for employees from these jurisdictions.
ATTACHMENT A – PRIMEKEY, INC.

General Terms and Conditions for Appliance Delivery

By both parties executing this Agreement in writing, These General Terms and Conditions shall apply to all offers and agreements under which PrimeKey Solutions AB (the “PrimeKey”) supplies Appliances or Product (as defined below) to the undersigned Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity"). No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing.

Definitions

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

Agreement: The agreement, including appendices, entered into between the parties.

Appliance Hardware: The physical hardware Appliance unit(s) to be delivered in accordance with the Agreement.

Appliance Software: The Appliance Software Products agreed to be included in the Appliance including any Updates developed by PrimeKey and provided under a Support and Maintenance Agreement between Customer and PrimeKey Support AB.

Appliance Software Product: Each software product/module agreed to be delivered in accordance with the Agreement.

Firmware: Any software embedded in the Appliance Hardware

Appliance: The Appliance Hardware security platform unit including EJBCA, SignServer, or third party applications The Appliance consists of Appliance Hardware and Appliance Software.

Product: The Appliance Hardware and/or the Appliance Software Products.

1. SCOPE OF DELIVERY

A. Quantity

Customer shall purchase and PrimeKey shall deliver the quantity of Appliances and with the content of the Appliance Software as specified in the Agreement.

B. Purchase Order(s)

Additional purchase orders shall not be binding on PrimeKey unless and until PrimeKey has accepted the purchase order by a written acknowledgement. A Purchase Order shall be a separate Agreement, unless otherwise agreed. These General Terms and Conditions shall apply on such purchase order. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

C. Standard Products

The Products shall be PrimeKey’s standard products. Unless specifically stated in a separate agreement between PrimeKey and Customer, PrimeKey shall have no obligation to create special or customized versions of any such product, or to ensure that the Products operate with Customer’s equipment, software, or systems. PrimeKey reserves the right, without prior approval from or notice to Customer, to make changes to any Product (i) to meet published specifications; (ii) that do not adversely affect the performance of the Product below any published specification; or (iii) when required for purposes of safety. PrimeKey also reserves the right to make changes to any Product without any obligation to make the same changes to Products previously ordered by or sold to Customer.

D. Serial number

PrimeKey will specify applicable serial number for the delivered Appliance.

2. PRICE AND PAYMENT TERMS

A. Prices

The price(s) for the Appliances to be delivered in accordance with the Agreement are stated in the Agreement in accordance with the GSA Schedule Pricelist. The price for additional Purchase order(s) is to be specified in PrimeKey’s written acknowledgement in accordance with the GSA Schedule Pricelist. If only a fixed price is given for the Appliance it includes purchase price for the Appliance Hardware and license fee for the Appliance Software. Otherwise a price is given for the Appliance Hardware and license fee for each Appliance Software Product. Under a line of GAO (U.S. Government Accountability Office) cases based on the Supremacy Clause of the US Constitution, the Government is exempt from state and local taxes whose “legal incidence” falls on the Federal-al Government. The applicability of a particular tax to the Government is a case by case determination for the contracting officer. Further, FAR 52.212-4(k) provides that the contract price includes all applicable Federal, state and local taxes and duties.

B. Payment terms

PrimeKey will invoice the Customer at the time of each shipment of Appliances, or Product as the case may be, to the Customer. Payment terms for all invoiced amounts shall be thirty (30) days from the receipt date of invoice(s), or PrimeKey ship the Appliances to Customer freight collect according to Section 3 B. Customer shall make all
payments due to PrimeKey WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER, and without regard to whether Customer has made or may make inspections of the Appliances delivered to Customer. If deliveries are authorized in installments, each shipment shall be paid for when due without regard to other scheduled deliveries.

Any invoiced amount which is not paid when due shall bear late interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

3. DELIVERY TERMS
A. Shipping Schedule - delay
PrimeKey shall use its reasonable efforts to ship Appliances to Customer in accordance with the shipment sched-ule provided by PrimeKey to Customer. Delivery dates proposed by Customer in its purchase order or other doc-umentation shall not be binding on PrimeKey. If there is a delay in delivery caused by PrimeKey for more than 30 days, the Customer may cancel the delayed shipment through written notice to PrimeKey. Excusable delays shall be governed by FAR 52.212-4(f). The delivery schedule shall be extended automatically by a period of time equal to the time lost because of any such delay. If PrimeKey has requested a bank guarantee in the Agreement a shipment is conditioned on that PrimeKey has received the requested bank guarantee.

B. Shipment
All deliveries of the Appliances shall be Ex works PrimeKey’s facility, in accordance with the INCOTERMS 2010 of the International Chamber of Commerce.

C. Shipment Appliance Software
The Appliance Software Product will either be installed by PrimeKey on the Appliance Hardware as specified in the Agreement and shipped in accordance to clause A in this Section 3 or made available for electronic down load and installation in accordance with Section 5 A. In the latter case Customer will be responsible for accessing PrimeKey’s site and downloading the Appliance Software Product. Delivery term shall be as set forth in clause B in this Section 3.

4. TITLE TO APPLIANCE HARDWARE
A. Transfer of Title
Title to the Appliance Hardware shall pass to Customer upon payment in full of the price for the Appliance. Not-withstanding any provision herein to the contrary, Customer shall take no title to any Firmware.

5. LICENSE TO APPLIANCE SOFTWARE
A. License to Appliance Software
PrimeKey grants to the Customer a perpetual, non-exclusive, non-transferable right to use the Appliance Soft-ware Product in the object code only on the number of Appliance Hardware that Customer bought a license for and only to install and use the Appliance Software Product on the hardware delivered under the Agreement (the Appliance Hardware) and to the extent that may be stipulated in other documents in the Agreement. For an Appliance Software Product that is a third party product, there may be third party supplier’s license conditions different from those of this Agreement. Nothing herein shall bind the Ordering Activity to any Appliance Software Product Third Party terms unless the terms are provided for review and agreed to in writing by all parties.

B. Restrictions
Customer agrees: (a) not to use the Appliance Software Product on any other hardware than on the Appliance Hardware except for the backup license referred to in C below, (b) not to transfer or sublicense the Appliance Software Product to any third party, (c) not to copy the Appliance Software Product except for the backup license referred to in C below and (d) to comply with the restrictions set forth in Section 6 B.

C. Back up license
If a Hardware Appliances is not used by the Customer and provided that it or part of it is subject to repair or re-placement by PrimeKey under the warranty provisions clause 7 or maintenance services under a valid Mainte-nance agreement with PrimeKey, Customer will have after prior written notice to PrimeKey a temporary license to use the Appliance Software Product on another hardware appliance as long as such non-working Hardware Appliances is not working subject to the license conditions in these General Terms and Conditions. PrimeKey will make the Appliance Software Product available to the Customer for electronic down load according to clause C Section 9 or permit the Customer to make the necessary copy of the Appliance Software Product.

6. INTELLIGENT PROPERTY RIGHTS
A. Rights
All rights, title, ownership and interest in and to Appliance Software and derivative works thereof to the Firm-ware including, but not limited to, all intellectual property rights therein, are and shall remain the property of PrimeKey and/or its PrimeKey except the rights expressly contained herein.

B. Restrictions
Except to the extent permitted by applicable law, Customer shall not reverse engineer, decompile, disassemble or otherwise translate or modify, alter or otherwise change the Appliance Software and derivative works thereof and to the Firmware.

C. Trademarks
Customer shall not alter or remove from the Products (or their packaging or documentation), or alter, any of PrimeKey’s or its suppliers’ trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Products (or their packaging or documentation).

7. LIMITED WARRANTIES – APPLIANCE HARDWARE
A. Express Warranty for the Appliance Hardware
Subject to the provisions of this Section 7 and Section 10, PrimeKey expressly warrants that, for a period of twelve (12) months (the "Warranty Period"), all components of the Appliance Hardware shall be free from faulty workmanship and defective materials under normal use and service. The Warranty Period shall commence on the date the Appliance Hardware is shipped from PrimeKey’s facility (as evidenced by PrimeKey’s packing slip or other receipt. The warranty stated by PrimeKey in this Section 7(A) is the only express warranty provided by PrimeKey. This express warranty may be modified only by express written agreement between the parties, and may not be modified or amended by any course of dealing between the parties, or custom and practice in the industry.

Customer’s remedies and PrimeKey’s aggregate liability with respect to the warranty provided by PrimeKey in this Section 7(A) are set forth in and limited by this Section 7 and Section 10. PrimeKey’s warranty does not apply to consumable items (e.g. batteries).

B. Warranty Remedy
If an Appliance Hardware fails under normal use and service during the Warranty Period due to a defect in mate-rials or faulty workmanship ("defect"), PrimeKey’s sole obligation shall be to repair or replace the Appliance Hardware, at PrimeKey’s option. Following repair or replacement, the Warranty Period shall expire at the end of the original period. Appliance Hardware and components that are replaced by PrimeKey shall become PrimeKey’s property.

C. Warranty Conditions
PrimeKey’s express warranty is strictly for the benefit of Customer and does not extend to any third party PrimeKey’s express warranty is contingent upon Customer’s payment of the purchase invoice and proper use of the Appliance Hardware, in accordance with any instructions or manuals provided by or available from PrimeKey. PrimeKey shall have no obligation under this express warranty unless Customer promptly reports the claim. PrimeKey’s obligations under this warranty are subject to PrimeKey’s examination of the Appliance Hardware and PrimeKey’s determination to its reasonable satisfaction that the claimed defect or fault actually exists and is not excluded from PrimeKey’s warranty under this Section 7. If PrimeKey determines that the Appliance Hard-ware is not defective or faulty within the terms of the express warranty, Customer shall pay for all costs of handling, transportation and repairs at PrimeKey’s then prevailing repair rates.

D. Warranty Exclusions
PrimeKey’s express warranty shall not apply if the defect or fault is caused by any of the following after delivery by PrimeKey: accident, unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power or environmental controls, rough handling during transportation, Customer’s failure to maintain the Product in accordance with PrimeKey’s specifications, abuses to the Product other than ordinary use, modifications by Customer, alterations or repairs by a party other than PrimeKey (unless specifically authorized by PrimeKey in writing). This express warranty will be rendered void if PrimeKey’s serial numbers, warranty data or quality assurance decals on the Product are removed or altered.

E. Disclaimer
THE EXPRESS WARRANTIES OF PRIMEKEY STATED IN SECTION 7(A) ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PAR-TY RIGHTS. THE EXPRESS OBLIGATION OF PRIMEKEY STATED IN SECTION 7(B) REPLACES ANY OTHER LIABILITY OR OBLIGATION OF PRIMEKEY ARISING OUT OF OR IN CONNECTION WITH THE DELIVERABLES, USE OR PERFORMANCE OF THE Appliance Hardware. PRIMEKEY DOES NOT INSURE THE SECURITY PROVIDED BY THE Appliance Hardware, NOR DOES IT WARRANT AGAINST IMPROVEMENTS IN THE TECHNICAL ARTS THAT MAY RENDER THE PRODUCTS INEFFECTIVE OR OBSOLETE.

8. APPLIANCE SOFTWARE - “LIMITED WARRANTY”

A. PrimeKey Support AB and the Customer shall enter into a Support and Maintenance Agreement. The rectification and liability for any defects in the Appliance Software shall be solely regulated and governed by the Maintenance Agreement. PrimeKey Support AB warrants that the Appliance Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Appliance Software written materials accompany-ing it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Customer may not in any case make any claims against PrimeKey for any defects or problems with the Appliance Software under the Agreement. Notwithstanding this, if there is a major defect in the Appliance Software that is reported in writing within 30 days from the delivery of the Appliance Software and the defect has not been rectified according to the Support and Maintenance Agreement within 60 days from the report, the Customer may, in writing, set a reasonable final deadline for rectification. If the material defect has not been rectified when the deadline has expired and it is of substantial significance for the Customer’s use of the concerned Appliance and PrimeKey knew or should have known of this, the Customer shall be entitled after the expiry of the deadline to notify the supplier in writing of the cancellation of the Agreement for the applicable Appliance. If the Customer cancels the Agreement for the concerned Appliance the Customer shall be entitled to refund of the paid price for that Appliance, which shall be the exclu-sive remedy for the cancellation and with no right to damages for Customer.

B. PrimeKey makes no warranty regarding the Appliance Software, expressed or implied, including but not limited to any implied warranties of merchantability and fitness for particular purpose, other than that the Appliance Soft-ware will operate in combination with the software and hardware in the Appliance. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO CASE WILL PRIMEKEY BE OBLIGED TO COMPENSATE THE CUSTOMER FOR DAMAGE, BE IT DIRECT OR INDIRECT, CAUSED BY MALFUNCTIONS OF THE APPLICA-TION SOFTWARE OR THE CUSTOMER’S USE OF IT, NOR IS PRIMEKEY RESPONSIBLE FOR DAMAGE.
WHICH MAY OCCUR AS A CONSEQUENCE OF THE CUSTOMER'S USE OF THE APPLIANCE SOFTWARE SUCH AS LOSS OF DATA, SALES, PRODUCTION OR PROFITS OR ANY DAMAGE TO A THIRD PARTY.

9. INFRINGEMENT
   A. PrimeKey undertake to defend, at its own expense, the Customer against any claim, suit or proceeding brought against any of them based on the allegation that the use of any Appliance Software within EU or United States furnished by PrimeKey under the Agreement constitutes an infringement of any intellectual property rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights. PrimeKey shall furthermore indemnify the customer against any costs or damages that the Customer may become liable to pay as a result of a judgment or settlement. The obligation of PrimeKey only applies if the Customer has notified PrimeKey without undue delay in writing of such claim, suit or proceeding and PrimeKey given authority, infor-mation, and assistance to settle the claim or control the defense of any suit or proceeding. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.
   B. In the event that the Appliance Software or any part thereof is in such suit held to constitute an infringement and/or its further use is enjoined, PrimeKey shall promptly, at its own expense and at its option, and to the extent it is commercial reasonable either: (a) replace the infringing Appliance Software with non-infringing software pro-grams and documentation of equivalent function and performance; or (b) modify the Appliance Software so that they become non-infringing without detracting from function or performance. If it is not commercial reasonable for PrimeKey to fulfill its obligations pursuant to the above within a reasonable time, the customer shall be entitled to a reduction of the price corresponding to the reduced value of the Appliance resulting from the infringement but not for longer period than five years from its delivery date.
   C. PrimeKey’s liability for infringements of the Appliance Software does not cover any third party products or infringements caused by Customer. PrimeKey’s entire liability for infringements is limited to what is set forth in this section 9.

10. LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES
   A. Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.
   B. PRIMEKEY’S AGGREGATE LIABILITY ARISING OUT OF THE SALE OF A APPLIANCE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE PURCHASE PRICE FOR THE APPLIANCE PAID BY CUSTOMER TO PRIMEKEY.
   C. IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE PRIMEKEY PROD-UCTS OR PRIMEKEY’S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE PRIMEKEY PRODUCTS. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
   D. Excusable delays shall be governed by FAR 52.212-4(f).
   E. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not sell Appliance absent these limitations.

11. SECRECY
   A. During a period of three years from the actual delivery date, neither party may, without the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. The duty of confidentiality does not extend to information which a party can show has become known to the other party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such infor-mation by law, court or government order or binding stock exchange regulations. Where a party is required to disclose information in such way, it shall notify the other party to this effect prior to disclosure. PrimeKey recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that cer-tain information be released, despite being characterized as “confidential” by the vendor.
   B. A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compliance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their em-ployees sign corresponding confidentiality undertaking.

12. APPLICABLE LAW, DISPUTES
   A. This Agreement shall be governed by and construed in accordance with the Federal laws of the United States.
   B. Reserved.

13. EXPORT –COMPLIANCE WITH LAW
A. PrimeKey is responsible for obtaining and maintaining any export licenses required for delivery of appliance to the agreed destination to The Customer. Prior the execution of this agreement, PrimeKey is responsible to provide the relevant export control commodity numbers (the “ECCN codes”) of products according to US and EU export administration regulations or the corresponding data according to other applicable regulations. This information shall be updated on an ongoing basis every time a non-insignificant update is provided or when new regulations come into effect.

B. Customer shall comply with all applicable laws, including export controls imposed by the Federal Government of the United States. Without limiting the generality of the foregoing, Customer agrees that it shall not export or re-export any PrimeKey Products to any country without first obtaining all necessary and required licenses, consents, and approvals. Customer acknowledges that shipments of the PrimeKey Products may be subject to export laws and that such laws could delay or preclude delivery of PrimeKey Products in the future. Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

14. GENERAL PROVISIONS
A. The Agreement, including the schedules and exhibits hereto, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings relating thereto.
B. For purposes of the Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or handwritten document, e-mail or other electronic format.
C. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by both PrimeKey and Customer. The failure of either PrimeKey or Customer at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.
D. All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if personally delivered or if sent by facsimile transmission, e-mail, courier or other express mail, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth below. Either party may by such notice to the other change such address.
E. The Agreement shall be binding upon, and inure to the benefit of, PrimeKey and Customer and their respective legal representatives, successors and permitted assigns. The parties shall not assign, sublicense or otherwise transfer any of its duties, hereunder, in whole or in part, without the prior written consent of the other Party.
F. In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from this Agreement, the remainder of this Agreement shall remain in full force and effect, and the invalid provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the invalid provision.
G. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

General Terms and Conditions for Support/Maintenance of Appliance

These General Terms and Conditions shall apply to all on support and maintenance provided by PrimeKey Solutions AB (“PrimeKey”) for Appliances or Product (as defined below) to the Customer. No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. PrimeKey and Customer are also referred to herein individually as a “Party” and collectively as the “Parties”.

Definitions
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Appliance**: The Appliance Hardware security platform unit including EJBCA, SignServer, or third party applica-tions
**Appliance Hardware**: The physical hardware Appliance unit(s) to be supported and maintained in accordance with the Support and Maintenance Agreement.
**Appliance Software Product**: Each software product/module agreed to be supported and maintained by PrimeKey in accordance with the Support and Maintenance Agreement including any Releases provided by PrimeKey under the Support and Maintenance Agreement.
**Firmware**: Any software embedded in the Appliance Hardware
**Product**: The Appliance Hardware and/or the Appliance Software Products.
**Services**: The services to be provided by PrimeKey under the Support and Maintenance Agreement.
Support and Maintenance Agreement: The Support and Maintenance agreement, including appendices, entered into between the parties
Any definition in the main document or other appendices of the Support and Maintenance Agreement shall also apply in this document.

1. PRIMEKEYS SERVICES OBLIGATIONS
PrimeKey shall from the Effective Date for a Product provide to Customer the support and maintenances in accordance with the terms and conditions set out in Appendix DMSHW Description of Maintenance/Support service for Appliances.
PrimeKey shall maintain an organization with employees that are appropriate, qualified and competent to perform services. The Supplier shall perform the Services in a professional manner.
The Services will be provided during the Business Hours as defined in Appendix DMSHW unless otherwise agreed.

2. THIRD PARTY SOFTWARE
The Services does not apply to third-party Software.

3. DEFAULT REPORTING – CUSTOMER OBLIGATIONS
The Customer shall to the Support Center as specified in Appendix DMSHW of any fault in a Product within a reasonable time from the point in time at which Customer becomes aware of the fault in question.
The Customer shall provide the assistance as set forth in Appendix DMSHW.

4. END OF LIFE - APPLIANCE HARDWARE
A. Repairs
Repar for End of Life Products will be performed only if components are reasonably available and replacements will be provided only as long as inventory is reasonably available.

B. Support
PrimeKey will provide best efforts to support an EOL Product but will be under no obligation to provide Major, Minor, or Maintenance Releases with respect to any product during its EOL state. PrimeKey will continue to provide Web-based, e-mail and telephone support to the extent reasonably practicable without providing Major Releases, Minor Releases or Maintenance Releases, and PrimeKey provides no guarantee that a problem with a Product supported on an End of Life basis can or will be resolved.

5. FEES
The annual fees for the Services are set forth in Appendix PSMSHW, Price Schedule in accordance with the GSA Schedule Pricelist, and shall be paid in the currency expressed in the Price Schedule. The annual support and maintenance fee is fixed for the initial terms of this Support and Maintenance Agreement.

6. PAYMENT
A. The annual support and maintenance fee will be invoiced and paid annually, in the first instance as of the Effective Date and every six (6) months thereafter, payable thirty (30) days after receipt of the invoice by Customer.

B. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

C. Reserved.

7. OWNERSHIP AND LICENSE
The Customer’s rights and obligations regarding releases of Appliance Software Product and work performed during the Services are the same as its rights and obligations regarding the original version of the Appliance Software Product under the Delivery Agreement. Any release will be a part of the original Delivery Agreement. PrimeKey will only be responsible for any Releases provided under the Support and Maintenance Agreement according to the conditions in the Delivery Agreement.

8. CONFIDENTIAL INFORMATION
A. Definitions
Confidential Information means any and all information relating in any way (directly or indirectly) to either parties business, finances, products, processes or employees and includes any information obtained by the other party in the course of accessing the other parties computers or networks, including passwords and security procedures ("Confidential Information").
Each party shall maintain the confidentiality of such Confidential Information and shall not disclose such Confidential Information except to those of its agents and employees who need to know such information in order to perform the Services. Both during and after the term of this Support and Maintenance Agreement, such agents and employees
shall hold all disclosures by the other party in strict confidence and shall not use the Confidential Information for any purpose other than in connection with the transactions contemplated in this Support and Maintenance Agreement.

B. Restrictions
During the term of this Support and Maintenance Agreement and for a period of five (5) years thereafter, the recipient shall not use the Confidential Information, except as necessary to complete the Services and shall not disclose the Confidential Information to any third party.

C. Exclusions
Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the recipient; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the Confidential Information; (d) is obtained by the recipient from a third party without obligation of confidentiality; or (e) is disclosed with the prior written approval of the disclosing party. recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be re-leased, despite being characterized as "confidential" by the vendor.

9. LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES
A. Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

B. PRIMEKEY'S AGGREGATE LIABILITY ARISING OUT OF THE PERFORMANCE OF SERVICES, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL EXCEED THE TOTAL CONTRACT PRICE, INCLUDING AGGREGATE FEES FOR THE RELEVANT PRODUCT OR APPLIANCE, PAID BY CUSTOMER TO PRIMEKEY.

C. IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, PRIMEKEY'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

D. Excusable delays shall be governed by FARS 52.212-4(f).
E. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not provide the Services absent these limitations.

10. PREMATURE TERMINATION
When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, PrimeKey shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11. GENERAL PROVISIONS
A. No Assignment
A Party may not assign this Support and Maintenance Agreement without the other Party's prior written approval.

B. Notices
Notice of termination and/or any other notices shall be sent by courier, registered post or electronic message to the other party's Coordinator at the address specified by such party. The other party shall be deemed to have received such notice:
(i) At the time of delivery, if delivered by courier;
(ii) 5 days after dispatch, if sent by regular post;
(iii) At the time of arrival at the recipient's electronic address, if sent by electronic message

C. Invalid Provisions
If any provision of this Support and Maintenance Agreement is held invalid or prohibited, such provision shall be invalid only to such extent without invalidating the remainder of this Support and Maintenance Agreement.

D. Modification of Support and Maintenance Agreement
This Support and Maintenance Agreement may not be modified nor may any provision hereof be waived except by a written document, duly executed by an authorized representative of each of the parties hereto, that specifically references this Support and Maintenance Agreement. No delay or omission by any party to exercise or de-tect any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver of any provision of this Support and Maintenance Agreement on any occasion or occasions shall not constitute a waiver of such provision on any succeeding occasion.

E. Entire Agreement
This Support and Maintenance Agreement any Customer purchase order(s) issued with respect to this Support and Maintenance Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, embody the entire
understanding of the parties and shall supersede any and all previous oral agreements, understand-ings, letters, documents, letters of understanding, memoranda, memoranda of understanding, representations, discussions, proposals and quotes between the parties relating to the subject matter of this Agreement.

F. Counterparts
This Support and Maintenance Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

G. Coordinators
Parties will each appoint and advise the other in writing of the name and address of a Coordinator. The only offi-cial channel for communications between the parties shall be through their respective Coordinators, except as may be otherwise authorized in writing by the parties. Each party shall promptly advise the other in writing of the name and address of the successor any Coordinators which may be appointed hereunder. Changes or modifica-tions to the terms and conditions of this Support and Maintenance Agreement are not within the duties or authori-ty of the Coordinators.

12. APPLICABLE LAW, DISPUTES
This Support and Maintenance Agreement shall be governed by and construed in accordance with the Federal laws ofthe United States.

Description of Maintenance/ Support services for PrimeKey Appliances

Definitions:
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

Business Hours: are the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays.

Major Release: mean major enhancements to the Appliance Software Product and is marked by the first digit in the Release digits i.e Release 1.2.3. A Major Release does not include enhancements/ new functionality that is sold as a separate module.

Minor Release: mean minor enhancements to the Appliance Software Product and is marked by the second digit in the Release digits i.e Release 1.2.3.

Maintenance Release: mean defect corrections and flaws in the finish to the Appliance Software Product and is marked by the third digit in the Release digits i.e Release 1.2.3.

Second Line support
Third Line support
The definitions in the main document and other appendices to the Support and Maintenance Agreement shall also apply in this document.

1. GENERAL
A. Telephone support
Telephone support means that where there is a fault, or suspected fault, in the Appliance, PrimeKey shall assist the Customer by replying to question from persons specifically appointed by the Customer, provided the time required to answer them is reasonable. Telephone Support is made only in English. Telephone support will be provided during the Business Hours.
Telephone Support does NOT include general system infrastructure, network design or troubleshooting, installa-tion assistance, or configuration support for third party components.

B. Problem Reporting and Tracking Procedures
Customer may use the services described herein only by making reference to the authorized Support and Maintenance Agreement number.

C. Services not included
Customer agrees that it will not expect PrimeKey to handle routine support and maintenance issues that are typi-cally the responsibility of a Product end-user and which were explained in reasonable detail in the provided prod-uct documentation, or during the training conducted by PrimeKey for Customer technical personnel as part of the installation and acceptance testing of the PrimeKey Products. Specifically PrimeKey support does not include any of the following:

a) custom programming services;
b) on-site support, including installation of hardware or software;
c) support of any software not constituting part of the Appliance Software;
d) training;

D. Supported Releases of the Appliance Software
PrimeKey will provide support for the current Major or Minor Release and the Major or Minor Release preceding the current Release, unless otherwise is specified in the next paragraph.
If PrimeKey offers a new Major Release, then PrimeKey will support the preceding Minor Release for 12 months. After this time, PrimeKey shall have no further responsibility for supporting and maintaining the prior releases, but may continue to do so in PrimeKey's sole discretion. PrimeKey shall notify the Customer if a Major Release is not compatible with the Appliance Hardware that is a service object under the Support and Maintenance Agreement.

E. Third party software
PrimeKey's undertaking does not apply to an Appliance Software Product that is a third party product.

F. Incompatibilities (Exception from PrimeKey's obligations)
PrimeKey assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Appliance Software Product, if Customer has made unauthorized changes to the Appliance Hardware or Appliance Software Product configuration in effect as of the effective date this Agreement, or to the operational environment approved by PrimeKey in writing and were made without prior notification and written approval by PrimeKey.

G. Customer assistance
Customer shall provide all reasonable assistance requested by PrimeKey and PrimeKey shall not be responsible for any delays or failures to support or maintain the Appliance Software and Appliance Hardware if and to the extent such failure is a result of Customer's failure to provide reasonable assistance to PrimeKey or otherwise perform its obligations under the Agreement.

Customer shall provide a description of the commands and procedures that reveal a fault.

H. Second Line support
If it is stated in the main document to the Support and Maintenance Agreement that Customer shall perform Second Line support, Customer shall perform the Second Line support and PrimeKey's shall only perform Third Line support.

2. SUPPORT SERVICES
A. Support Service Plans
If Customer reports an error in the Appliance Hardware or PrimeKey diagnose establishes that the incident is related to an Appliance Hardware defect section 4 Hardware repair services shall apply. Different support service plans related to Appliance Software and Hardware Products are provided by PrimeKey.

Support Center HOTLINE
PrimeKey will make available support contacts to request servicing of the Products. The initial support contacts are:

a) Issue Tracker at https://jira.primekey.se/, or
b) email at support@primekey.com, or
c) telephone number at +46 8 522 11 660 or (888) 832-0111.

i. Standard Support Service Plan
The Support Center HOTLINE for Standard Support is available during Business Hours.

ii. Premium Support Service Plan
The Support Center HOTLINE for Premium Support is available twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year.

iii. Service Response Times

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<thead>
<tr>
<th>Severity</th>
<th>Standard</th>
<th>Premium</th>
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<tr>
<td>Severity 1</td>
<td>8 Business Hours</td>
<td>4 hours</td>
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<tr>
<td>Severity 2</td>
<td>16 Business Hours</td>
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<td>Severity 3</td>
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<td>Severity 4</td>
<td>64 Business Hours</td>
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B. Severities
Upon receipt by PrimeKey through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Products, PrimeKey shall respond as provided below.

i. Severity 1: Produces an emergency situation in which the PrimeKey Product is inoperable, produces incorrect results, or fails catastrophically. Service Response: PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered as a work-around, emergency software. If PrimeKey delivers an acceptable work-around, the severity classification will drop to a Severity 2.
ii. **Severity 2**: Produces a detrimental situation in which performance (throughput or response) of the PrimeKey Products degrades substantially under reasonable loads, such that there is a severe impact on use; the PrimeKey Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

**Service Response**: PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered in the same format as Severity 1 problems. If PrimeKey delivers an acceptable work around for a Severity 2 problem, the severity classification will drop to a Severity 3.

iii. **Severity 3**: Produces an inconvenient situation in which Appliance Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

**Service Response**: PrimeKey will use reasonable commercial efforts to resolve Severity 3 problems in the next Maintenance Release.

iv. **Severity 4**: Produces a noticeable situation in which the use is affected in some way that is reasonably correctable by a documentation change or by a future, regular release from PrimeKey.

**Service Response**: PrimeKey will provide, if agreed by PrimeKey, as a fix or fixes for Severity 4 problems in future Maintenance Release.

C. **Support Incident**

PrimeKey, in its reasonable discretion, will determine what constitutes a support Incident. Typically, a support Incident is a situation where Customer needs remedial support focusing on one aspect of the Appliance Software Product Severity Levels 1, 2 and 3. Note that Severity Level 4 from is not considered as a support Incident. One support Incident may involve multiple emails, phone consultations, and off-line research.

A Support Incident has reached resolution when Customer receives one of the following:

a) Information that resolves the issue;

b) Information on how to obtain a software solution that will resolve the issue, or information that identifies the issue as being resolved by upgrading to a new Release of the Appliance Software Product;

c) Notice that the issue is caused by a previously known, unresolved issue or an incompatibility issue with the Appliance Software;

d) Information that isolates issue to a third-party product, not supported by PrimeKey.

3. MAINTENANCE APPLIANCE SOFTWARE AND FIRMWARE

PrimeKey will maintain the Products by providing Appliance Software Products and Firmware with Major Releases, Minor releases and Maintenance Releases as the same are offered by PrimeKey to its licensees of the Appliance Software Product under maintenance generally. Releases will be provided on an as-available basis and include the items listed below:

a) Bug fixes;

b) Enhancements to keep current with the Appliance Hardware delivered under the same Delivery Agreement as the Appliance Software Products; and

c) Performance enhancements to the PrimeKey Software;

Releases do not include:

a) Platforms not included in Appliance;

b) new functions such as new applications/modules.

Releases will be provided in object code or update archives and updates to related documentation will be made available for electronic download. All such deliveries shall be made by a single communication to the Agreement Coordinator. Duplication, distribution and installation of Releases are the responsibility of Customer. PrimeKey will not be responsible for incompatibilities as set forth in section 1.F above.

4. APPLIANCE HARDWARE REPAIR SERVICE

A. **Repair Service**

During the maintenance period, PrimeKey will repair or replace an Appliance Hardware that fails due to error, provided the Customer has obtained a valid PrimeKey RMA (Return merchandise authorization (RMA) from PrimeKey. PrimeKey will pay return shipping expenses. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. The replacement device or part may be reconditioned or new. Reconditioned equipment is tested, certified, and carries the remainder of the original equipment’s warranty.

B. **Maintenance Service Plans**

Different maintenance service plans related to Appliance Hardware Repair are provided by PrimeKey.

i. **Standard Maintenance Service Plan**

Defect devices or parts will be repaired or replaced within 5 working days of receipt of the product. (Turn-around times do not include shipping time)

ii. **Premium Maintenance Service Plan**

Defect devices or parts will be repaired or replaced within 2 working days of receipt of the product. (Turn-around times do not include shipping time)

iii. **Premium Maintenance Service Plan with HW+ Option**
In addition to the Premium Maintenance Service Plan, HW+ offers Customers the option for an advance replacement of defect devices or parts without charges. Upon an RMA approval, PrimeKey will ship a replacement part before receiving the defective part. Customer is responsible for return of the equipment within 30 days and return shipping charges. Unreturned equipment will be invoiced at then current list price.

C. Excluded items
PrimeKey’s obligations and the stated fees do not include the following, unless otherwise follows from the Specification:

a) Procurement of add-ons, consumables and other equipment;

b) Maintenance of consumables, add-ons and other equipment

5. END OF LIFE – APPLIANCE HARDWARE

The need to End-of-Life (EOL) a product occurs from time-to-time as technology advances make earlier versions obsolete, as components and parts become no longer available for manufacture or repair and as the resulting ability to provide acceptable support becomes severely constrained and costly. PrimeKey, at its discretion, will from time-to-time declare a Product to be in an EOL state.

EOL announcements will be made to customers that will include dates for last time buy, upgrade or migration path options, and dates when changes to support coverage take effect.

Repairs for End of Life Products will be performed only if components are reasonably available and replacements will be provided only as long as inventory is reasonably available.

PrimeKey will provide best efforts to support an EOL Product but will be under no obligation to provide Major, Minor, or Maintenance Releases with respect to any product during its EOL state.

PrimeKey will continue to provide support to the extent reasonably practicable without providing Major Releases, Minor Releases or Maintenance Updates, and PrimeKey provides no guarantee that a problem with a Product supported on an End of Life basis can or will be resolved.
PrimeKey License Conditions for Software

These license conditions shall apply to all offers and Agreements under which PrimeKey Solutions AB (the “PrimeKey”) supplies Software (as defined below) to the Customer. No deviations from these License Conditions shall be valid unless expressly agreed in writing. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

Definitions

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Agreement**: The agreement, including appendices, entered into between the parties regarding the license of Software.

**Software** means the enterprise version of EJBCA, SignServer and other PrimeKey Software. The Software includes software programs and releases provided under the Supports and Maintenance Agreement regarding the Software.

1. LICENSE

A. License grant

Subject to these PrimeKey’s license conditions PrimeKey grants to Customer a non-exclusive, non-transferable right, perpetual right to use the Software in object code form for internal purposes and not as a part of service provided to third parties.

B. Restrictions

Customer agrees that Customer shall not: (a) modify, reverse engineer or decompile, disassemble or otherwise translate the Software or alter or make derivative works thereof, unless permitted according to mandatory law; (b) remove any of PrimeKey’s proprietary notices or legends, including any PrimeKey Trademark contained in or on the Software or the documentation, without the specific prior written consent of PrimeKey; (c) make any copies of the Software or the documentation except for back up purposes; (d) sublicense, assign or otherwise transfer its rights under this Article 1.

2. SCOPE OF DELIVERY

A. Purchase Order(s)

Additional purchase orders shall not be binding on PrimeKey unless and until PrimeKey has accepted the purchase order by a written acknowledgement. These General Terms and Conditions shall apply on such purchase order. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

B. Standard Software

The Software shall be PrimeKey’s standard Software. Unless specifically stated in a separate agreement between PrimeKey and Customer, PrimeKey shall have no obligation to create special or customized versions of any such product, or to ensure that the Software operate with Customer’s equipment, software, or systems. PrimeKey reserves the right, without prior approval from or notice to Customer, to make changes to any Product (i) to meet published specifications; (ii) that do not adversely affect the performance of the Product below any published specification; or (iii) when required for purposes of safety. PrimeKey also reserves the right to make changes to any Product without any obligation to make the same changes to Software previously ordered by or sold to Customer.

3. PRICE AND PAYMENT TERMS

A. Prices

The price(s) for the Software to be delivered in accordance with the Agreement are stated in the Agreement in accordance with the GSA Schedule Pricelist. The price for additional Purchase order(s) is to be specified in PrimeKey’s written acknowledgement in accordance with the GSA Schedule Pricelist.PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

B. Payment terms

PrimeKey will invoice the Customer at the time of delivery of the Software to the Customer. Payment terms for all invoiced amounts shall be thirty (30) days from the receipt date of invoice(s). Customer shall make all payments due to PrimeKey WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER, and without regard to whether Customer has made or may make inspections of the Software delivered to Customer. Any invoiced amount which is not paid when due shall bear interest at the interest rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

4. DELIVERY TERMS

A PrimeKey will deliver the Software on electronic media, or make the Software available for electronic download within 5 working days from the date of the accepted Purchase Order. In the latter case Customer will be responsible for accessing PrimeKey’s site and downloading the Software.

B The delivery term for the Software shall be Ex works PrimeKey’s facility INCOTERMS 2010. If PrimeKey has requested a bank guarantee in the Agreement a delivery is conditioned on that PrimeKey has received the requested bank guarantee.

5. INTELLECTUAL PROPERTY RIGHTS

A. Rights
All rights, title, ownership and interest in and to Software and derivative works thereof but not limited to, all intellectual property rights therein, are and shall remain the property of PrimeKey and/or its PrimeKey except the rights expressly contained herein.

B. Trademarks
Customer shall not alter or remove from the Software (or their packaging or documentation), or alter, any of PrimeKey’s or its suppliers’ trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Software (or their packaging or documentation).

6. SOFTWARE - "LIMITED WARRANTY"
A. PrimeKey and the Customer shall enter into a Support and Maintenance Agreement. The rectification and liability for any defects in the Software shall be solely regulated and governed by the Maintenance Agreement. PrimeKey warrants that the Appliance Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Appliance Software written materials accompanying it. EXCEPT AS EXPRESS-LY SET FORTH IN THE FOREGOING, Customer may not in any case make any claims against PrimeKey for any defects or problems with the Software under the Agreement. Notwithstanding this, if there is a major defect in the Software that is reported in writing within 30 days from the delivery of the Software and the defect has not been rectified according to the Support and Maintenance Agreement within 60 days from the report, the Customer may, in writing, set a reasonable final deadline for rectification. If the material defect has not been rectified when the deadline has expired and it is of substantial significance for the Customer’s use of the concerned Software and PrimeKey knew or should have known of this, the Customer shall be entitled after the expiry of the deadline to notify the supplier in writing of the cancellation of the Agreement for the applicable Software. If the Customer cancels the Agreement for the concerned Software the Customer shall be entitled to refund of the paid price for that Software, which shall be the exclusive remedy for the cancellation and with no right to damages for Custom-er.
B. PrimeKey makes no warranty regarding the Software, expressed or implied, including but not limited to any implied warranties of merchantability and fitness for particular purpose. TO THE MAXIMUM EXTENT PERMIT-TED BY APPLICABLE LAW IN NO CASE WILL PRIMEKEY BE OBLIGED TO COMPENSATE THE CUSTOMER FOR DAMAGE, BE IT DIRECT OR INDIRECT, CAUSED BY MALFUNCTIONS OF THE SOFTWARE OR THE CUSTOMER’S USE OF IT, NOR IS PRIMEKEY RESPONSIBLE FOR DAMAGE WHICH MAY OCCUR AS A CONSEQUENCE OF THE CUSTOMER’S USE OF THE SOFTWARE SUCH AS LOSS OF DATA, SALES, PRODUCTION OR PROFITS OR ANY DAMAGE TO A THIRD PARTY.

7. INFRINGEMENT
A. PrimeKey undertake to defend, at its own expense, the Customer against any claim, suit or proceeding brought against any of them based on the allegation that the use of any Software within EU or United States furnished by PrimeKey under the Agreement constitutes an infringement of any intellectual property rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights. PrimeKey shall furthermore indemnify the Customer against any costs or damages that the Customer may become liable to pay as a result of a judgment or settlement. The obligation of PrimeKey only applies if the Customer has notified PrimeKey without undue delay in writing of such claim, suit or proceeding and PrimeKey given authority, information, and assis-tance to settle the claim or control the defense of any suit or proceeding. Nothing contained herein shall be con-strued in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.
B. In the event that the Software or any part thereof is in such suit held to constitute an infringement and/or its further use is enjoined within EU or United States, PrimeKey shall promptly, at its own expense and at its option, and to the extent it is commercial reasonable either: (a) replace the infringing Software with non-infringing soft ware programs and documentation of equivalent function and performance; or (b) modify the Software so that they become non-infringing without detracting from function or performance. If it is not commercial reasonable for PrimeKey to fulfill its obligations pursuant to the above within a reasonable time, the Customer shall be entitled to a reduction of the price corresponding to the reduced value of the Software resulting from the infringement but not for longer period than five years from its delivery date.
C. PrimeKey’s liability for infringements of the Software does not cover any third party software or infringements caused by Customer. PrimeKey’s entire liability for infringements is limited to what is set forth in this section 7.

8. LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES
A. Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

B. PRIMEKEY’S AGGREGATE LIABILITY ARISING OUT OF THE SALE/LICENSE OF A SOFTWARE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT THE PRICE FOR THAT SOFTWARE PAID BY CUSTOMER TO PRIMEKEY.
C. IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE SOFTWARE OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE SOFTWARE. The foregoing limitation of
liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

D. Excusable delays shall be governed by FAR 52.212-4(f).

E. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not sell Software absent these limitations.

9. AUDIT

At PrimeKey’s request Customer shall at least annually provide a signed certification verifying that the Software is being used pursuant to the provisions of the Agreement and a listing of the numbers of the systems on which the Software is run. In addition, PrimeKey shall be entitled periodically audit the Customer’s use of the Software to ensure that Customer are using the Software in accordance with the provisions of the Agreement. If an audit reveals that a Customer has used or permitted the use of the software in excess of the amount of licenses pur-chased, PrimeKey shall obtain payment from the Customer for the excessive use.

10. SECRECY

A. During a period of three years from the actual delivery date, neither party may, without the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. The duty of confidentiality does not extend to information which a party can show has become known to the party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such infor-mation by law, court or government order or binding stock exchange regulations. Customer further undertakes without limitation in time to keep the Software and any and documentation and other information related to the Software strictly confidential, and not to disclose the Software to any third party, without the prior written consent of Licensor. PrimeKey recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the ven-dor.

B. A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compli-ance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their em-employees sign corresponding confidentiality undertaking.

11. APPLICABLE LAW, DISPUTES

A. This Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

B. Reserved.

12. EXPORT –COMPLIANCE WITH LAW

A. PrimeKey is responsible for obtaining and maintaining any export licenses required for delivery of Software to the agreed destination to the Customer. Prior the execution of this agreement, PrimeKey is responsible to provide the relevant export control commodity numbers (the “ECCN codes”) of Software according to US and EU export ad-ministration regulations or the corresponding data according to other applicable regulations. This information shall be updated on an ongoing basis every time a non-insignificant update is provided or when new regulations come into effect.

B. Customer shall comply with all applicable laws, including export controls imposed by the Federal Government of the United States. Without limiting the generality of the foregoing, Customer agrees that it shall not export or re-export any PrimeKey Software to any country without first obtaining all necessary and required licenses, consents and approvals. Customer acknowledges that shipments of the PrimeKey Software may be subject to export laws and that such laws could delay or preclude delivery of PrimeKey Software in the future. Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

13. GENERAL PROVISIONS

A. The Agreement, including the schedules and exhibits hereto, together with the underlying GSA Schedule Con-tract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings relating thereto.

B. For purposes of the Agreement, the term “written” means anything reduced to a tangible form by a party, includ-ing a printed or hand written document, e-mail or other electronic format.

C. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by both PrimeKey and Customer. The failure of either PrimeKey or Customer at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

D. All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if personally delivered or if sent by facsimile transmission, e-mail, courier or other express mail service, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth below. Either party may by such notice to the other change such address.

E. The Agreement shall be binding upon, and inure to the benefit of, PrimeKey and Customer and their respective legal representatives, successors and permitted assigns. The parties shall not assign, sublicense or otherwise transfer any of its duties, hereunder, in whole or in part, without the prior written consent of the other Party.
F. In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from this Agreement, the remainder of this Agreement shall remain in full force and effect, and the invalid provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

G. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.
Description of Maintenance/ Support services for PrimeKey Software

Definitions:
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Business Hours:** are the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays.

**Major Release:** mean major enhancements to the Software Product and is marked by the first digit in the Re-lease digits i.e Release 1.2.3. A Major Release does not include enhancements/ new functionality that is sold as a separate module.

**Minor Release:** mean minor enhancements to the Software Product and is marked by the second digit in the Release digits i.e Release 1.2.3.

**Maintenance Release:** mean defect corrections and flaws in the finish to the Software and is marked by the third digit in the Release digits i.e Release 1.2.3.

**Second Line support**

**Third Line support**

The definitions in the main document and other appendices to the Support and Maintenance Agreement shall also apply in this document.

1. GENERAL

A. Telephone support

Telephone support means that where there is a fault, or suspected fault, in the Software, PrimeKey shall assist the Customer by replying to question from persons specifically appointed by the Customer, provided the time required to answer them is reasonable. Telephone Support is made only in English. Telephone support will be provided during the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays (“Business Hours”).

Telephone Support does NOT include general system infrastructure, network design or troubleshooting, installation assistance, or configuration support for third party components.

B. Problem Reporting and Tracking Procedures

Customer may use the services described herein only by making reference to the authorized Support and Maintenance Agreement number. A twenty-four (24) hour Support Center HOTLINE is provided for problem reporting, including reporting of problems outside of normal business hours.

C. Services not included

Customer agrees that it will not expect PrimeKey to handle routine support and maintenance issues that are typi-cally the responsibility of a Product end-user and which were explained in reasonable detail during the training conducted by PrimeKey for Customer technical personnel as part of the installation and acceptance testing of the PrimeKey Products. Specifically PrimeKey support does not include any of the following:

a) custom programming services;

b) on-site support, including installation of hardware or software;

c) support of any software not constituting part of the Software;

d) training;

D. Supported Releases of the Software

PrimeKey will provide support for the current Major and Minor Release and the Major or Minor Release preceding the current Release. If Prime Key offers a Major Release PrimeKey will support the last Release in the preceding Minor Release 12 months after notice to the Customer that the support of the Major Release will cease. After this time, PrimeKey shall have no further responsibility for supporting and maintaining the prior releases, but may continue to do so in PrimeKey's sole discretion.

PrimeKey shall notify the Customer if a Major Release is not compatible with the Software Hardware that is a service object under the Support and Maintenance Agreement.

E. Third party software

PrimeKey’s undertaking does not apply to a Software that is a third party product.

F. Incompatibilities (Exception from PrimeKey’s obligations)

PrimeKey assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Software, if Customer has made changes to the Software Hardware or Software configuration in effect as of the effective date this Agreement or to the it environment approved by PrimeKey in writing and were made without prior notification and written approval by PrimeKey.

G. Customer assistance

Customer shall provide all reasonable assistance requested by PrimeKey and PrimeKey shall not be responsible for any delays or failures to support or maintain the Software if and to the extent such failure is a result of Customer’s failure to provide reasonable assistance to PrimeKey or otherwise perform its obligations under the Agreement. Customer shall provide a description of the commands and procedures that reveal a fault.

H. Second Line support

If it is stated in the main document to the Support and Maintenance Agreement that Customer shall perform Second Line support, Customer shall perform the Second Line support and PrimeKey’s shall only perform Third Line support.
2. SUPPORT SERVICES
A. Support Service Plans
Support Center HOTLINE
PrimeKey will make available support contacts to request servicing of the Products. The initial support contacts are:
   a) Issue Tracker at https://jira.primekey.se/, or
   b) email at support@primekey.com, or
   c) telephone number at +46 8 522 11 660 or (888) 832-0111.

i. Standard Support Service Plan
   The Support Center HOTLINE for Standard Support is available during Business Hours.

ii. Premium Support Service Plan
   The Support Center HOTLINE for Premium Support is available twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year.

iii. Service Response Times

<table>
<thead>
<tr>
<th>Severity</th>
<th>Standard</th>
<th>Premium</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>4 hours</td>
</tr>
<tr>
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<tr>
<td>3</td>
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<td>24 hours</td>
</tr>
<tr>
<td>4</td>
<td>64 Business Hours</td>
<td>24 hours</td>
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B. Severities
Upon receipt by PrimeKey through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Products, PrimeKey shall respond as provided below.

i. Severity 1: Produces an emergency situation in which the PrimeKey Product is inoperable, produces incorrect results, or fails catastrophically.
   **Service Response:** PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered as a work-around, emergency software. If PrimeKey delivers an acceptable work-around, the severity classification will drop to a Severity 2.

ii. Severity 2: Produces a detrimental situation in which performance (throughput or response) of the PrimeKey Products degrades substantially under reasonable loads, such that there is a severe impact on use; the PrimeKey Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.
   **Service Response:** PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered in the same format as Severity 1 problems. If PrimeKey delivers an acceptable work-around for a Severity 2 problem, the severity classification will drop to a Severity 3.

iii. Severity 3: Produces an inconvenient situation in which Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.
   **Service Response:** PrimeKey will use reasonable commercial efforts to resolve Severity 3 problems in the next Maintenance Release.

iv. Severity 4: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from PrimeKey.
   **Service Response:** PrimeKey will provide, if agreed by PrimeKey, as a fix or fixes for Severity 4 problems in future Maintenance Release.

C. Support Incident
PrimeKey, in its reasonable discretion, will determine what constitutes a support Incident. Typically, a support Incident is a situation where Customer needs remedial support focusing on one aspect of the Software Product Severity Levels 1, 2 and 3. Note that Severity Level 4 from is not considered as a support Incident. One support Incident may involve multiple emails, phone consultations, and off-line research.

A Support Incident has reached resolution when Customer receives one of the following:
   a) Information that resolves the issue;
   b) Information on how to obtain a software solution that will resolve the issue, or information that identifies the issue as being resolved by upgrading to a new Release of the Software Product;
   c) Notice that the issue is caused by a previously known, unresolved issue or an incompatibility issue with the Software;
   d) Information that isolates issue to a third-party product, not supported by PrimeKey.

3. MAINTENANCE
PrimeKey will maintain the Software by providing Major Releases, Minor releases and Maintenance Releases as the same are offered by PrimeKey to its licensees of the Software under maintenance generally. Releases will be provided on an as-available basis and include the items listed below:

a) Bug fixes;

b) Enhancements to keep current with the Software Hardware delivered under the same Delivery Agreement as the Software; and

c) Performance enhancements to the PrimeKey Software; but Releases do not include:

a) Platforms not included in Software;

b) new functions such as new applications/modules.

Releases will be provided in object code or update archives and updates to related documentation will be made available for electronic download. All such deliveries shall be made by a single communication to the Agreement Coordinator. Duplication, distribution and installation of releases are the responsibility of Customer. If requested, PrimeKey will provide assistance in the installation of Releases on a time and materials basis, plus expenses. PrimeKey will not be responsible for incompatibilities as set forth in section 1.F above.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Catbird Networks, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-Of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrument of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claims under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ARTICLE 1: DEFINITIONS

“Catbird” means Catbird Networks Inc., 1800 Green Hills Road Suite 113, Scotts Valley, CA 95066.

“Catbird Control Center” is a web-based management console for managing one or more Catbird Virtual Machine Appliances (as defined below).

“Catbird Virtual Machine Appliance” is software that provides security by connecting to physical or virtual network switches.

“Catbird Virtual Security Professional” or “CVSP” is a suite of training materials comprising curricula and software.

“Catbird vSecurity® Application” comprises two components: the Catbird Virtual Machine Appliance and the Catbird Control Center. The Catbird Virtual Machine Appliance operates in existing virtual infrastructures or as a standalone virtual machine using a virtual machine player technology. The Catbird Control Center provides management, data correlation, data analysis, logging and integration with other vendor products.

“Seat” means a named individual user of CVSP.

“Socket” means a CPU slot on a printed circuit board (PCB) that is designed to house a CPU (also called a microprocessor). CPU sockets are found on the motherboard of server computers.

“Software” means the Catbird vSecurity® Application and CVSP, including (a) all of the contents of the files, download packages delivered to Ordering Activity or hosted by Catbird or its distributors, resellers, OEM/MSP partners, or other business partners (collectively “Authorized Partner(s)”) and accessed by Ordering Activity, including but not limited to (i) Catbird or third party computer information or software; (ii) related explanatory materials in printed, electronic, or online form, including information on the term of Ordering Activity license ("Documentation"); and (b) upgrades, modified or subsequent versions and updates of the Software, if any, licensed to Ordering Activity by Catbird or an authorized partner as part of a maintenance contract or service subscription.

“Use” or “Using” means to access, install, download, copy or otherwise benefit from the Software.

ARTICLE 2: LICENSE GRANTS

Section 2.1 Catbird Control Center License. Contractor hereby grants Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time, a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and use Catbird Control Center on Ordering Activity computer(s), for the sole purpose of managing Catbird Virtual Machine Appliances. Ordering Activity license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.2 Catbird Virtual Machine Appliance License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install, and Use the Catbird Virtual Machine Appliance software on Ordering Activity computer(s), for the sole purpose of implementing network security controls and virtual infrastructure monitoring within Ordering Activity network. Ordering Activity license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.3 CVSP License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and Use CVSP for the sole purpose of Using the Catbird vSecurity® Application. Ordering Activity’s license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.4 Feedback License. Ordering Activity hereby grant to Catbird through Contractor a royalty-free, worldwide, irrevocable, perpetual license to make any and all use of any and all suggestions, enhancement requests, recommendations or other feedback provided by Ordering Activity or on Ordering Activity’s behalf relating to the Software, any portion thereof, or any Documentation and training materials associated therewith.

ARTICLE 3: USE OF THE SOFTWARE

Section 3.1 No Third-Party Grants. Ordering Activity will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Software or any portion thereof.

Section 3.2 No Improper Use. Ordering Activity will not (i) permit any third party to access the Software or make the Software available for access by any third party unless expressly agreed to in writing by Catbird, (ii) copy, frame or mirror any part or content of the Software, (iii) access the Software in order to build a competitive product or service, (iv) copy any features, functions or graphics of the Software, (v) Use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (vi) Use the Software to store or transmit malicious code or software, (vii) interfere with or disrupt the integrity or performance of the Software or third-party data contained therein, (viii) attempt to gain unauthorized access to the Software or its related systems or networks, or (ix) Use the Software, alone or in combination with other components, to infringe the intellectual property rights of any third party.

Section 3.3 No Reverse Engineering. Ordering Activity will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Software or any portion thereof. Any source code, ideas, know-how, techniques, algorithms, procedures, and any other concepts derived from any act performed in violation of this Section 3.3 shall constitute intellectual property of Catbird to which Catbird shall retain all exclusive right, title, and interest, and to which the terms of Section 4.1 shall apply.
Section 3.4 No Unlawful Use. Ordering Activity will Use the Software solely for lawful purposes. In this respect, Ordering Activity may not, without limitation (a) intercept or monitor any equipment that is not Ordering Activity’s; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Software; (c) Use the Software to cause or intend to cause embarrassment or distress to, or to threaten, harass any third party.

Section 3.5 Consent. If Ordering Activity Use of the Software is dependent upon the use of a processor and bandwidth owned or controlled by a third party, Ordering Activity acknowledge and agree that Ordering Activity license to Use the Software is subject to Ordering Activity obtaining consent from the relevant third party for such use. Ordering Activity represent and warrant that by accepting this Agreement and using the Software, Ordering Activity have obtained such consent.

ARTICLE 4: EXCLUSIVE OWNERSHIP

Section 4.1 Owned by Catbird. As between Ordering Activity and Catbird, Catbird shall own all right, title, and interest in and to the Software and any associated Documentation and training materials, including all related intellectual property rights (“IP Rights”). Nothing in this Agreement shall be construed to transfer any such IP Rights to, or to vest any such IP Rights in, Ordering Activity. Ordering Activity will not take any action to jeopardize, limit or interfere with Catbird’s IP Rights. Any unauthorized use of Catbird’s IP Rights is a material breach of this Agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws. For the avoidance of doubt, Ordering Activity possession, installation, or Use of the Software does not transfer to Ordering Activity any title to the intellectual property in the Software, and Ordering Activity will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

Section 4.2 No Removal of Notices. Ordering Activity will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or Catbird’s rights in the Software or any associated documentation and Training Materials and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

ARTICLE 5: UPGRADES AND UPDATES

Section 5.1 Upgrades. Contractor, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Software. Contractor has no obligation to make available to Ordering Activity any subsequent versions of the Software.

Section 5.2 Updates. Contractor, in its sole discretion, reserves the right to updates security information to the Catbird vSecurity® Application. Contractor has no obligation to make available to Ordering Activity any subsequent updates to the security information contained within the Catbird vSecurity® Application.

ARTICLE 6: RESERVED

ARTICLE 7: INDEMNIFICATION, WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY

Section 7.1 Reserved.

Section 7.2 Warranty Disclaimer. CONTRACTOR MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, CONTRACTOR, ITS SUPPLIERS, AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, OR INTEGRATION. WITHOUT LIMITING THE FOREGOING PROVISIONS, CONTRACTOR MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

Section 7.3 Reserved.

ARTICLE 8: TERMINATION

Section 8.1 Reserved.

Section 8.2 Reserved.

Section 8.3 Consequences of Termination. Upon termination of this Agreement:
(a) all licenses and rights to Use the Software shall immediately terminate; (b) Ordering Activity will immediately cease any and all Use of the Software; and (c) Ordering Activity will immediately remove the Software from all hard drives, networks and other storage media and destroy all copies of the Software in Ordering Activity’s possession or under Ordering Activity’s control.

ARTICLE 9: MISCELLANEOUS

Section 9.1 Export Controls. Ordering Activity are advised that the Software is of United States origin and subject to the United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. Ordering Activity agree not to directly or indirectly export, import, download or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government). Additionally, Ordering Activity agree not to directly or indirectly export, import or transmit the Software contrary to the laws or regulations of the United States.
Section 9.2 Government End Users. The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any Use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Schedule Contract and shall be prohibited except to the extent expressly permitted by the terms of this Schedule Contract.

Section 9.3 Reserved.

Section 9.4 Reserved.

Section 9.5 No Waiver. No waiver of any term or condition of this Agreement will be valid or binding on either Party unless the same will have been mutually assented to in writing by an officer of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter.

Section 9.6 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the Parties shall negotiate in good faith a substitute, valid, and enforceable provision that most nearly reflects the Parties' intent in entering into this Agreement.

Section 9.7 Catbird Customer Contact. If Ordering Activity have any questions concerning this Agreement, or if Ordering Activity would like to contact Catbird for any other reason, please call (831) 440-8149, fax (831) 461-1611, or write: Catbird Networks, Inc., Attention: Customer Service, 1800 Green Hills Road, Suite 113, Scotts Valley, California 95066
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Centrify Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included in the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CENTRIFY CORPORATION

CENTRIFY CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

GRANT. Contractor hereby grants to Ordering Activity (herein also referred to as “You” or “Your”) as licensee, a personal, nonexclusive, nontransferable license, without right of sublicense, to install, use and execute, Centrify DirectControl, together with any updates and modifications to the foregoing, if any, provided to you by Contractor (collectively "Software"). The Software is licensed solely in machine readable object code format. You may install, use and execute the component(s) of the Software on that number and type of applications and computers for which you have paid Contractor a GSA license fee. The manner of calculating the type and number of applications and computers shall be determined by the operation and configuration of the Software, the terms of the Documentation, and/or Centrify’s standard practices, unless otherwise agreed in a fully executed agreement between you and Contractor. Contractor further grants you a personal, nonexclusive, nontransferable license to install, use, execute and modify the Group Policies supplied, in their source code form, as part of the Software, solely for the purpose of modifying the Group Policies and Reports to meet your specific needs (“Modified Group Policies and Reports”). Except as provided herein, the Modified Group Policies and Reports shall be deemed to be Software hereunder.

RESTRICTIONS. The rights granted herein are subject to the following restrictions: (i) you may not copy (except for back-up purposes), modify, port, adapt, translate, localize, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except and only to the extent that it is expressly permitted by the law in effect in the jurisdiction in which you are located notwithstanding this limitation; (ii) you may not create derivative works based on the Software; (iii) you may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or Documentation; (iv) you may not transfer, lease, assign, sublicense, pledge, rent, share or distribute the Software or make it available for timesharing, service bureau or on-line use, unless previously agreed to in writing by Contractor; and (v) you may not disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of Contractor.

SOFTWARE. If you receive your first copy of the Software electronically, and a second copy on physical media, the second copy may be used for archival purposes only. This Attachment A does not grant you any right to receive, or any license to, any enhancement or update of the Software, or any other Centrify software.

TITLE. The Software and Documentation are confidential and proprietary information of Contractor and/or its suppliers. Title, ownership rights, and intellectual property rights in and to the foregoing shall remain with Contractor and/or its suppliers. The Software and Documentation are protected by the copyright laws of the United States and international copyright treaties. Title, ownership rights, and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives you no rights to such content. This license does not convey to you an interest in or to the Software, but only grants you a limited right of use, which may be revocable in accordance with the terms of this Attachment A.

MAINTENANCE AND TECHNICAL SUPPORT. Subject to your payment of applicable GSA fees, Contractor through Centrify will provide maintenance and support services in accordance with Centrify’s standard support policies. You understand that Centrify may update the software at any time. Such updates may be provided to you in due course, but Centrify has no obligations to provide such updates to you. You may decide whether to install updates to the Software unless Contractor, through Centrify expressly notifies you that a particular update is mandatory.

DISCLAIMER OF WARRANTIES. THE SOFTWARE IS PROVIDED TO YOU AS IS AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY CONTRACTOR OR ITS SUPPLIERS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, INCLUDING WARRANTIES OR CONDITIONS OF TITLE, QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATIONS OF THE SOFTWARE WILL BE UNINTERRUPTED. CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THE ACCURACY OF THE REPORTS GENERATED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS ATTACHMENT A AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

U.S. GOVERNMENT RESTRICTED RIGHTS. If the Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in Software and Documentation, including its rights to use, modify, reproduce, release, perform, display or disclose the Software or Documentation, will be subject in all respects to the commercial license rights and restrictions provided in this Attachment A.

EXHIBIT A – CENTRIFY SUPPORT PACKAGES

Support Packages

Contractor through Centrify offers two customer support packages, Standard and Premium, to provide the right level of support to fit your organization’s specific needs.

Standard Support
- Support by phone and email.
- Access to Centrify’s secure Online Customer Support Portal, which includes Knowledge Base articles, case submission and tracking, and product and documentation downloads
- Two designated support contacts.
- An escalation process to ensure your issues are addressed in a timely manner.

Online product updates and patch downloads.

https://www.immixgroup.com/contract-vehicles/gsa/lt-70/0511T/
Premium Support
- All Standard Support features, plus …
- 24 x 7 x 365 support.
- Two additional designated support contacts (for a total of four).
- Eligible for extended version and platform support.

After hours Incident Support
- Pre-purchased Premium incidents for Standard Support customers
- Expires 90 days from purchase.

How to Contact Support
Contractor through Centrify Support is accessible through multiple channels.

Online
Centrify’s secure Online Customer Support Portal provides 24-hour access to Knowledge Base articles, case submission and tracking, and product and documentation downloads. Visit: www.centrify.com/support

Phone & Email
North America (and all other areas excluding EMEA)
Phone: +1 408 542 7500
Monday – Friday 9 a.m. to 6 p.m. in your North America time zone (GMT -5 to GMT -8)
Email: support.us@centrify.com
Response times vary based on your support package and the priority level of the issue.

Europe, Middle East and Africa (EMEA)
Phone: +44 118 965 7887
Monday – Friday 9:00 to 18:00 Central European Time (GMT +1)
9:00 to 18:00 UK (GMT)
Email: support.emea@centrify.com
Response times vary based on your support package and the priority level of the issue.

Priority Levels & Response Times
The Centrify Support team understands that you require a timely response to your requests. The following table shows the different issue priority levels, their descriptions, and the guaranteed response time. With Premium Support, you may report a critical issue at any time, night or day, and expect a Technical Support Engineer to begin working on your case based on the priority level of the case.

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Standard</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1: Production System Down</td>
<td>4 Business Hours</td>
<td>2 Business Hours</td>
</tr>
<tr>
<td>Level 2: Development System Down</td>
<td>6 Business Hours</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Level 3: Serious Software Problem</td>
<td>8 Business Hours</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Level 4: General Usage Problem</td>
<td>24 Business Hours</td>
<td>24 Business Hours</td>
</tr>
<tr>
<td>Level 5: Feature Request</td>
<td>24 Business Hours</td>
<td>24 Business Hours</td>
</tr>
</tbody>
</table>

Note: These are standard case response times and not case resolution times. A response means that we will contact you to 1) acknowledge receiving your issue report and 2) get any additional information that we will need in order to assist you.

Escalation Procedures
Every issue report is tracked from the time you contact us until we jointly agreed that the issue has been resolved. Based on the priority of an issue, Contractor through Centrify Support escalates customer cases through our organization to ensure your business-critical issues receive a quick resolution.

In general, if you are not satisfied with the responsiveness of our Support staff, the issue can be escalated to your Regional Sales Representative. If you are still not satisfied, the issue can be further escalated to the Vice President of Support.

Product Updates
Purchasing either Standard or Premium Support entitles you to product updates at no additional charge during the term and type of the maintenance contract for all Centrify products licensed and covered by maintenance.

You can obtain the latest versions of Centrify software through our Online Customer Support Portal: www.centrify.com/support
End User License Agreement

RECITALS:

A. CBT Nuggets is engaged in the business of creating and selling information technology training materials, including, but not limited to, applications and platforms, individual videos within a series, entire series, series packages, supplemental materials, Learner resources, quiz questions, proprietary instances of the virtual lab and/or access to any portions thereof (the “CBT Content”).

B. Specific to this Agreement, CBT Nuggets offers a streaming subscription to access the CBT Content offered by CBT Nuggets through its website located at http://www.cbtnuggets.com (the “Website”), the CBT Nuggets mobile applications (“Apps”), as well as other learning resources and team coaching services (collectively the “Services”).

C. The Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Government Customer” or “Ordering Activity”) desires to access the CBT Content and, as applicable, to make the CBT Content and Services available to Government Customer’s employees and contractors (individually “End User” and collectively the “End Users”), and CBT Nuggets desires to provide the same pursuant to the terms and subject to the conditions of this End User License Agreement (“Agreement”).

AGREEMENT:

The Parties agree as follows:

1. GRANT OF LICENSE.

1.1 While Government Customer has an active subscription to access the CBT Content through the Website, CBT Nuggets grants Government Customer non-transferrable, non-royalty bearing, non-assignable (except as explicitly permitted herein), non-exclusive, non-sublicensable licenses to access, view and to use the CBT Content. The licenses are solely for use by Government Customer and its End Users.

1.2 Government Customer may not copy, reproduce, reverse engineer, translate, port, modify or make derivative works of the CBT Content in whole or in part. Government Customer may not rent, sell, assign, lease, sublicense, market, publish, display, distribute or transfer the CBT Content in any manner not expressly authorized by this Agreement without the consent of CBT Nuggets. Government Customer shall communicate to all End Users the restrictions and limitations of the license as set forth in this Paragraph 1.

1.3 Each license is a single user license and the single user license must be connected to a named End User. The email address attached to license must be specifically associated solely with that individual End User. Government Customer may reassign to a new End User any single user license that has been held by another End User for at least thirty (30) days prior to any such assignment.

1.4 Upon Government Customer’s discovery and/or the request of CBT Nuggets, Government Customer agrees to promptly remedy any violation of this Paragraph 1 and to provide CBT Nuggets with sufficient evidence that Government Customer is in compliance with this Paragraph 1.

1.5 WHEN THE END USER IS AN INSTRUMENTALITY OF THE U.S., RE COURSE AGAINST THE UNITED STATES FOR ANY ALLEGED BREACH OF THIS AGREEMENT MUST BE MADE AS A DISPUTE UNDER THE CONTRACT DISPUTES CLAUSE (CONTRACT DISPUTES ACT). DURING ANY DISPUTE UNDER THE DISPUTES CLAUSE, CBT NUGGETS SHALL PROCEED DILIGENTLY WITH PERFORMANCE OF THIS AGREEMENT, PENDING FINAL RESOLUTION OF ANY REQUEST FOR RELIEF, CLAIM, APPEAL, OR ACTION ARISING UNDER THE AGREEMENT, AND COMPLY WITH ANY DECISION OF THE CONTRACTING OFFICER.

1.6 End Users connected to a valid license may access additional training resources, as provided by CBT Nuggets, including Accountability Coaching, access to the Learner Community, and other training offerings. Access to such resources
are as available and dependent upon an End User’s professionalism and decorum while engaging such resources, CBT Nuggets staff, and/or other End Users through such resources or the Services.

1.7 Access to and use of the CBT Nuggets Content and Services is inextricably linked to the processing of personal data, as outlined in the CBT Nuggets Privacy Policy available at https://www.cbtnuggets.com/privacy.

2. Limited Warranty. Each party warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement. CBT Nuggets further warrants that: (i) any Services provided under this Agreement and the Order Form will be performed in a professional manner in accordance with the prevailing industry standards; (ii) the Services will be performed substantially in accordance with any applicable CBT Nuggets documentation under normal use and circumstances; and (iii) the functionality and accessibility of the CBT Content will not be materially decreased during the term of this Agreement. Government Customer’s exclusive remedy for any breach of these warranties shall be to terminate this Agreement pursuant to Paragraph 5 herein.

3. Disclaimer of Warranties. Except as expressly provided in Paragraph 3 of this Agreement, the CBT Content and Services are provided to Government Customer on an “AS IS” and “WITH ALL FAULTS” basis. The CBT Content and Services are complex and may contain nonconformities, defects or errors. CBT Nuggets does not warrant that the CBT Content and Services will be error free. **CBT Nuggets does not make any warranty, express or implied, and hereby disclaims any and all warranties, including but not limited to, warranties of merchantability and fitness for a particular purpose.**

4. Intellectual Property. All right, title and interest in and to the CBT Content and Services, and the content, materials, and data contained therein, including any applicable statutory or common law trademarks and/or copyrights expressly reserved by CBT Nuggets. No portion of the CBT Content may be copied, reproduced, distributed, displayed, transferred or assigned without the express written consent of CBT Nuggets.

5. TERM AND TERMINATION.

5.1 Term. The term of Government Customer’s subscription period for accessing the CBT Content and the related services shall commence on the Effective Date and shall continue for the duration stated on the Order Form. Unless the Parties otherwise agree in writing, through the execution of a renewal or extension of this Agreement (“Renewal Order Form”), once any applicable subscription period has concluded, the licenses granted by this Agreement shall immediately terminate and Government Customer shall have no further right to access, review or use in any manner any CBT Nuggets content, including the CBT Content. When the End User is an instrumentality of the United States, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Act. During any dispute under the Disputes Clause, CBT Nuggets shall proceed diligently with performance of this Agreement, pending final resolution for relief, claim, appeal, or action arising under this Agreement, and comply with any decision of the Contracting Officer.

5.2 Termination for Cause. When the End User is an instrumentality of the United States, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Act. During any dispute under the Disputes Clause, CBT Nuggets shall proceed diligently with performance of this Agreement, pending final resolution for relief, claim, appeal, or action arising under this Agreement, and comply with any decision of the Contracting Officer. Upon expiration of Government Customer’s subscription authorized under the Order Form or, as applicable, the Renewal Order Form, Government Customer shall immediately discontinue all access and use of the CBT Content. Neither Party shall be liable for any damages resulting from a termination of this Agreement in accordance with this Paragraph 5. Those sections of this Agreement, which by their nature should survive, shall survive.

6. Governing Law and Venue. In the event of any dispute or claim relating to or arising out of this Agreement shall be governed by, and construed and interpreted in accordance with United States Federal law, and any action seeking legal or equitable relief will be brought and adjudicated only in the courts of the United States.

7. MISCELLANEOUS PROVISIONS.

7.1 Notices. Notices may be provided by either electronic or physical mail as provided in the Order From. If no email address is stated, then physical mail shall be the only method of providing notice. The person(s)/department(s) identified in the Order Form will receive notices on behalf of their respective party. Each
Party may change the person(s)/department(s) to which notices shall be sent by providing written notice to the other Party.

7.2 **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

7.3 **Entire Agreement.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) and the CBT Nuggets Privacy Policy sets forth the entire understanding between CBT Nuggets and Government Customer with respect to the subject matter hereof, and supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. No other rights are granted hereunder except as expressly set forth in this Agreement.

7.4 **Order of Precedence, Conflicting Terms.** In the event of any conflict between the terms contained in the Agreement and the Order Form, the terms of the Order Form shall take precedence.

7.5 **Compliance with Laws.** Both Parties agree to comply with all applicable local, state, national and foreign laws, rules and regulations including, but not limited to, all applicable export and import laws and regulations, in connection with their performance, access and/or use of the CBT Content under this Agreement to the extent permitted by United States Federal law and does not limit the sovereignty of the United States.

7.6 **STANDARD TERMS.**

7.6.1 Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

7.6.2 Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The vendor shall state separately on its invoices taxes excluded from the fees, and the Government Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7.6.3 The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

7.6.4 The vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor. When the end user is an instrumentality of the U.S. Government, neither this Agreement, the Order Form, nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Check Point Software Technologies, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law. Where any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach of the contract, it must file a claim with the Contracting Officer in writing as soon as it is reasonably possible after the occurrence of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   e) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   f) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   g) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   h) **Waivers of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   i) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
Clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renews.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of any appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at the future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federal-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR § 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
CHECK POINT SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS:

“Licensed Configuration” means to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of users, devices or nodes (an internal computing device with an IP address) on the trusted side of the network or that is trying to traverse the firewall, and the numbers of cores, or the maximum throughput capacity stated, or the code generated from the master installation, or any other hardware or software specifications, as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. If the Product purchased by You does not come with a License Key then the Licensed Configuration shall be the minimum configuration allowed for the Product by Check Point upon which the licensing fee was based.

“Licensed-server” means the server or appliance (defined by the host ID identified by You to Contractor through Check Point when obtaining the License Key) which enables the Product to operate in accordance with the Licensed Configuration. “License Key” means the code provided to You by Contractor through Check Point, which enables the Product to operate on the Licensed-server or appliance for the specified Licensed Configuration.

“Product” means the object code copy of the software program, including Third Party Software, provided to You, together with the associated original electronic media and/or associated hardware devices (“Hardware Products”) and all accompanying manuals and other documentation, if available, and together with all enhancements, upgrades, and extensions thereto that may be provided by Contractor through Check Point to You from time to time.

“Standard User” means You indicated in Your purchase order or in requesting the License Key that You intend to use the Products on Your own behalf, or You obtained the products from a Managed Service Provider, reseller, vendor or any other intermediate supplier.

“Third Party Software” means any software programs provided by third parties contained in the Product.

“Third Party Software Provider” means the third party that has the right to provide and grant licenses for the use of Third Party Software.

“You” or “Your” means Ordering Activity.

2. LICENSE AND RESTRICTIONS:

License. Contractor hereby grants only to You, a non-exclusive, non-sublicensable, non-transferable perpetual license (with the exception of (i) the license shall not be perpetual if the Product is designated for a limited time period only, in which case the license shall terminate at the expiration of the applicable period; and (ii) with regards to any Hardware Product, the license shall be valid only as part of and for the life of the originally designated Hardware Product) to install and use the copy of the Product in accordance with the applicable statutory law, as described in the accompanying documentation for which You have paid the applicable fees to Contractor, and only within the designated limits of Your Product license for which You have purchased and provided to users, according to the restricted, maximum, authorized number of users, computer instances (means a computing unit individuated by an instance of an operation system), or copies of the Product (as the case may be) that can be used and installed at any given time. No Product, nor any portion thereof, may be used by or on behalf of, accessed by, re-sold to, rented to, or distributed to any other party.

Standard User Restrictions. If You are a Standard User, the Products are licensed to You solely for use by You to provide policy management for Your own operations. To the extent applicable, You may reproduce and include the copyright notice and any other notices that appear on the original Product on any back up copy. You agree not to allow others to use the Product and You will not use the Product for the benefit of third parties. You acknowledge that the source code of the Product, and the underlying ideas or concepts, are valuable intellectual property of Check Point and You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Products by any means whatsoever. You will not develop methods to enable unauthorized parties to use the Product, or to develop any other product containing any of the concepts and ideas contained in the Product not independently developed by You. You will not (and will not direct any third party to) modify Product or incorporate any portion of Product into any other software or create a derivative work of any portion of the Product. You will not (and will not direct any third party to) remove any copyright or other proprietary notices from the Product. Your use of the Product may require the purchase of separate licenses to use particular features, functionalities, operations, or capabilities.

Specific Restrictions. The Product is licensed to You based on the applicable Licensed Configuration purchased, as set forth in the Licensed Configuration definition in Section 1. The License permits the use of the Product only in accordance with the Product specifications as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. It is a violation to create, set-up or design any hardware, software or system which alters the number of readable IP addresses, users, number of cores or exceeds the maximum throughput capacity presented to the Product with the intent, or resulting effect, of circumventing the Licensed Configuration.

Disabled License-server. The License Key You obtain from Contractor through Check Point enables the Licensed-server which enables You to use the Licensed Configuration of the Product. If your Licensed-server is disabled for any reason, Check Point may, at its sole discretion, issue You another License Key which will enable You to operate this Product on a substitute Licensed-server. In this event, You agree not to use the Product on the original

Licensed-server nor its License Key.

**Customization for Product with VPN Functionality.** For a Product with VPN functionality, customization is permitted to allow the inclusion of a bitmap on the left side of the authentication challenge/response dialog, and the insertion of text in the authentication success and authentication failure dialog boxes; provided, however, that the Product is used to communicate with a Check Point VPN-1 gateway licensed to the entity using the Product and the customization may not contain any reference to a competitive gateway or to Check Point products or services without Contractor’s prior written approval.

**Check Point Data Loss Prevention (“DLP”) Blade, DLP-1 Product Family and Document Security Product Family.** If you are using any of these products, in many countries you may be required to advise users that their data, actions taken on the data, and web traffic may be inspected. Please consult the Check Point user guide and local laws as applicable.

**Third Party Violation.** In purchasing a Product, You are acknowledging that Contractor through Check Point may need to make a determination for You on the potential effect the identified programs may have on Your system. You agree that the Product may automatically delete and/or restrict access to certain programs and/or provide to You the customized ability to delete and/or restrict access to certain programs. The deletion and/or restriction of access to any of these programs may be in violation with other license agreements that You have knowingly or unknowingly agreed to. The deletion and/or restriction of these programs and the potential violation of a third party license is Your responsibility. Check Point has no ability to verify what, if any, third party agreements You may have agreed to.

**Inspecting Encrypted Traffic.** Certain Check Point products and/or features may enable the inspection of encrypted traffic. The ability to define the inspection rules is provided to You and You may define it based on your organizational needs. However, it shall be your sole responsibility to comply with all applicable laws and regulations in defining Your inspection rules and privacy regulations. You understand that this feature enables decrypting the traffic at the gateway in order to inspect it, after which it is re-encrypted before it is sent to the server.

3. **TITLE AND INTELLECTUAL PROPERTY:**

   All right, title, and interest in and to the Product shall remain with Check Point and its licensors. The Product is protected under international copyright, trademark and trade secret and patent laws. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

4. **LIMITED WARRANTY, WARRANTY DISCLAIMERS:**

   **Limited Software Warranty.** Contractor warrants to You that the encoding of the software program on the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its user manual, as it exists at the date of delivery, for a period of ninety (90) days. Contractor's liability and Your remedy under this warranty shall be, at Contractor's option, either: (i) return of the price paid to Contractor for the Product, resulting in the termination of the purchase order, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, THE PRODUCT AND ANY SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. CONTRACTOR DOES NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. CONTRACTOR DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to You. This warranty gives You specific legal rights.

5. **PRE-RELEASE VERSIONS:**

   **License Grant.** With respect to any pre-release version of a Check Point product, including a Beta or an Early Availability product (all collectively referred to herein as a “Beta Product”) that may be provided to You by Contractor through Check Point from time to time, at its sole discretion, Contractor grants You a non-transferable and non-exclusive license to use the Beta Product for evaluation purposes only. The license is designed to provide You with early operational experience with the Beta Product and to provide Check Point with specified information regarding Your experiences with the installation and operation of the Beta Product. The license shall be in effect for a limited period as determined by Check Point and certain other restrictions may apply. You may be asked to sign a separate agreement pertaining to the Beta Product.

   **No Obligations.** Contractor has no obligation to provide support, maintenance, upgrades, modifications, or new releases for a Beta Product. Owing to the experimental nature of the Beta Product, You are advised not to rely exclusively on the Beta Product for any reason. YOU AGREE THAT THE BETA PRODUCT AND RELATED DOCUMENTATION ARE BEING DELIVERED “AS IS” WITHOUT WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CONTRACTOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR DAMAGES, DIRECT OR INDIRECT, OF ANY NATURE OR EXPENSES INCURRED BY YOU IN CONNECTION WITH THE BETA TESTING. YOUR REMEDY SHALL BE TO TERMINATE THE BETA TEST AND THIS LICENSE BY WRITTEN NOTICE TO CONTRACTOR.

**EXHIBIT A – CHECK POINT HARDWARE WARRANTY:**

1. **LIMITED HARDWARE WARRANTY:**

   Contractor warrants that the hardware components of its Hardware Product shall be free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, in accordance with the documentation provided, for a period of one (1) year from the date of activation of the Hardware Product. If the Hardware Product has not been activated, the warranty will be valid for fifteen (15) months from the date of Contractor’s shipment of the Hardware Product (“Warranty Period”).

   After the Warranty Period, certain return material authorization (“RMA”) services, as provided by Contractor through Check Point (which are not covered under this warranty), are available for all Hardware Products pursuant to a purchased and active Check Point support agreement.

   Ordering Activity’s (herein also referred to as “You” or “Your”) remedy, and Contractor’s liability for defective hardware components, shall be that Contractor through Check Point, upon confirmation of a defect or failure of a hardware component to perform as warranted, shall at its sole option, either repair or replace the nonconforming hardware component or return of the price paid for the Hardware Product. All replacement parts furnished to you...
under this warranty shall be refurbished and equivalent to new, and shall be warranted as new for the remainder of the original warranty period. If a hardware failure occurs in the first 30 days from the product’s software activation, Contractor through Check Point will replace it with new part or full unit as may be needed. All defective parts, which have been replaced, shall become the property of Check Point. All defective parts that have been repaired shall remain Your property. This warranty gives You specific legal rights.

2. EXCLUSIONS:

The foregoing warranties and remedies shall be void as to any Hardware Products damaged or rendered unserviceable by one or more of the following: (1) improper or inadequate maintenance by anyone other than Contractor or Contractor’s authorized agents, (2) software or interfacing supplied by anyone other than Contractor, (3) modifications, alterations or additions to the Hardware Products by personnel not certified by Contractor or Contractor’s authorized agents to perform such acts, or other unauthorized repair, installation or opening or other causes beyond Contractor’s control, (4) unreasonable refusal to agree with engineering change notice programs, (5) negligence by any person other than Contractor or Contractor's authorized agents, (6) misuse, abuse, accident, electrical irregularity, theft, vandalism, fire, water or other peril, (7) damage caused by containment and/or operation outside the environmental specifications for the Hardware Products, (8) alteration or connection of the Hardware Products to other systems, equipment or devices (other than those specifically approved by Contractor) without the prior approval of Contractor, or (9) any use that is inconsistent with the user manual supplied with the Hardware Product. The warranty period is not extended if Contractor through Check Point repairs or replaces a warranted product or any parts. Contractor may change the availability of limited hardware warranties, at its discretion, but any changes will not be retroactive.

3. HARDWARE RETURN PROCEDURES:

If a Hardware Product or one of its component parts does not function as warranted during the warranty period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide either return and replacement service or replacement with a refurbished part/unit for the Hardware Product under the type of warranty service Check Point designates for that Hardware Product. A defective Hardware Product or one of its component parts may only be returned to Check Point upon Check Point’s prior written approval. Any such approval shall reference an RMA number issued by an authorized Check Point service representative. To request an RMA number, you or your local Check Point Certified Solution Provider (“CCSP/CSP/ACSP”) must contact Check Point’s Technical Assistance Center (“TAC”) and open a Service Request. You should always register the Hardware Product in your Check Point User Center account. If you do not register the Hardware Product with Check Point, you may be required to present proof of purchase as evidence of your entitlement to warranty service. The Hardware Product’s identification number will be required for all RMA cases.

Transportation costs, if any, incurred in connection with the return of a defective Hardware Product to Contractor through Check Point shall be borne by You. Any transportation costs incurred in connection with the redeelivery of a repaired or replacement item to You by Check Point shall be borne by Check Point; provided, however, that if Check Point determines, in its sole discretion, that the allegedly defective item is not covered by the terms and conditions of the warranty or that a warranty claim is made after the warranty period, the cost of the repair by Check Point, including all shipping expenses, shall be reimbursed by You.

4. HARDWARE REPLACEMENT PROCEDURES:

Contractor through Check Point will attempt to diagnose and resolve your problem over the phone or web. Upon determination of the hardware issue is related to a malfunction of one of the Hardware Product components, an RMA process will be initiated by Check Point’s TAC. Check Point’s TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement.

For Warranty Replacement service, it is required that you deliver the faulty unit to a location Contractor through Check Point designates, and provide courier name and tracking number to Check Point’s TAC. After the faulty unit is returned to Check Point, Check Point will use commercially reasonable efforts to ship the replacement hardware within seven (7) business days. Actual delivery times may vary depending on Your location. Check Point’s TAC will send the required hardware to the Hardware Product’s physical location, as it appears in your User Center and as verified with You when opening the Support Service Request.

For Hardware Advanced Replacement, support options Standard, Standard Onsite, Premium, and Premium Onsite are available for customers who have purchased the Hardware Product support plan with Contractor.

5. HARDWARE RETURN PROCEDURES:

If a defective Hardware Product covered under warranty fails to operate within thirty (30) days from its activation, but no more than one hundred and twenty (120) days from the date of Contractor’s shipment of the Hardware Product, Contractor through Check Point will provide expedited replacement of a new unit within two (2) business days from Check Point fulfillment hub, following confirmation of any such failure. Customers outside of the fulfillment hub region should allow for additional transit time due to international customs clearance.

6. ADDITIONAL RESPONSIBILITIES:

You agree:

- Before Contractor or its partner exchanges a Hardware Product or part, to remove all features, parts, options, alterations, data and attachments not under warranty service and ensure that the Hardware Product is free of any legal obligations or restrictions that prevent its exchange.

- To obtain authorization from the owner to have Contractor or its partner service a Hardware Product that you do not own.

- Where applicable, before service is provided:
  - Follow the service request procedures that Contractor or its partner provides;

Backup and secure all programs and data in the Hardware Product;
Inform Contractor or its partner of changes in the Hardware Product physical location.

- To provide Contractor or its partner with sufficient and safe access to your facilities to permit Contractor to fulfill its obligations.
- To ship back the faulty Hardware Product (or replaceable unit) suitably packaged according to the guidelines as Contractor through Check Point specified in the letter shipped with the RMA, to the Check Point designated location.
- You shall ship the faulty Hardware Product once TAC approves the RMA and provide the courier name and tracking number to TAC before Contractor through Check Point processes the RMA.
- If you are a customer who has purchased the support plan with Contractor covering Advanced Replacement Service, You will ship the faulty Hardware Product within five (5) business days of the arrival of the RMA.

To securely erase from any Hardware Product you return to Contractor through Check Point for any reason all programs and data not provided by Check Point with the Hardware Product. You acknowledge that in order to perform its responsibilities under this Limited Hardware Warranty, Check Point may ship all or part of the Hardware Product or its software to third party locations around the world, and you authorize Check Point to do so.

EXHIBIT B - CHECK POINT DIRECT SUPPORT PROGRAM:

a. DEFINITIONS:

“Advance Hardware Replacement” means a Hardware replacement service for Ordering Activities who have purchased Hardware Support, whereby after Check Point TAC approves an RMA, Check Point delivers a replacement to Ordering Activity’s Site before returns the faulty hardware to Check Point.

“ACE Partner” means an authorized Check Point partner who is staffed with Check Point Certified Professionals and Appliance Certified Experts (ACE) in accordance with Check Point ACE Partner requirements.

“Activation Date” means the date a License Key is registered for activation of Software within the Check Point User Center.

“Appliance” shall have the meaning set forth herein for the term “Hardware”.

“Business Day” means normal working day in the time zone where the Ordering Activity is located.

“Certified Professional” means an individual who has passed the appropriate current Check Point Certification Test(s) to demonstrate technical competency. The current minimum requirement of a Certified Professional is a Check Point Certified Security Expert (CCSETM) for the current Major Release of Network Software, Check Point Certified End Point Expert (CCEPE) for End Point Software and Check Point Appliance Certified Expert (CCSE ACE) for current Major Release of Hardware.

“Check Point” means Check Point Software Technologies, Inc.

“Ordering Activity” means the party identified as the purchasing organization.

“Designated Contacts” means Ordering Activity named contacts, engineering resource individuals, who are established person-specific email addresses in the User Center account associated with the Customer Support contract. It is expected that these contacts will be Check Point Certified Professionals.

“Device Number” means a unique identifier of a hardware device, which can be located in a label on a Hardware Product. Check Point uses Media Access Control (MAC) Address, Serial Number (SN), or Service Tag Number (STN) as a Device Number, depending on the type of Hardware.

“Documentation” means user and technical manuals provided by Check Point for use with the Software and Hardware.

“Endpoint Security Product(s)” means Check Point product(s) with an Endpoint device security focus.

“Enhancement” means all Software changes, including new releases, new versions, product improvements, system modifications, updates, upgrades, Service Packs, Feature Packs, field modifications, and all Hardware changes, including official Check Point Hardware product enhancements and accessories.

“Error” means an Error in the product, which degrades the product as defined by the Severity definitions, as compared to Check Point published functionality and performance specifications.

“Hardware” means a computing device and/or its component with a specific function and limited configuration ability. The Hardware is sold by Check Point for the purpose of executing the specific Check Point Software supplied with it.

“Information” means any idea, data, program, technical, business, or other intangible information, however conveyed.

“Intellectual Property” means Patents, copyrights, trademarks, and/or trade secrets whose owners have rights at law or in equity to exclude others from exploiting such property.
“Severity 1” means 
(a) an Error with a direct security impact on the product; 
(b) an Error isolated to Software or Appliance that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging; 
(c) a reported defect in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions; or 
(d) inability to use the licensed product or a critical impact on operation requiring an immediate solution.

“Severity 2” means 
(a) an Error isolated to Software or the Appliance that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging; 
(b) a reported defect in the licensed product, which restricts the use of one or more features of the licensed product to perform necessary business functions but does not completely restrict use of the licensed product; or 
(c) ability to use the licensed product, but an important function is not available, and operations are severely impacted.

“Severity 3” means 
(a) an Error isolated to the Software or Appliance that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact; 
(b) a reported defect in the licensed product that restricts the use of one or more features of the licensed product to perform necessary business functions, while the defect can be easily circumvented; or 
(c) an Error that can cause some functional restrictions but it does not have a critical or severe impact on operations.

“Severity 4” means 
(a) a reported anomaly in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions; this is a minor problem and is not significant to operation; or 
(b) an anomaly that may be easily circumvented or may need to be submitted to Check Point Research and Development as a request for enhancement.

“Severity” Definitions for Endpoint Security product(s):

“Severity 1” means 
(a) an Error with a direct security impact on the product; or
(b) an Error isolated to Software, for which there is no reasonable Workaround, which renders the end-point devices to fail catastrophically, affecting more than 1000 end point devices or 35% of deployed client base (in any case more than 100 affected end-point devices) within a production environment (not pre-deployment or staging) where end-point devices have been interrupted and not recovered; e.g., severe and general deployment wide system impact, systems are down, making end-point devices unable to perform (even with reduced performance) necessary business operations even after a change of, and/or addition of procedures, configurations, applications, tools and/or data.

“Severity 2” means
(a) an Error isolated to Software, for which there is a reasonable Workaround, which substantially degrades the usability of the end-point devices, restricting the usage of one or more features of the licensed product with minor impact of necessary business functions. The Error can cause some functional restrictions but it does not have a critical or severe impact on operations, e.g., the endpoint device is operational but may experience performance or operational limitations; or
(b) an Error isolated to Software only affecting one or a limited number of individual end-point devices, that is not common for the installed end-point device population; it may, or may not, be possible to circumvent the error, e.g., an individual end-point device(s) is encountering issues not common for deployed end-point device client base.

“Severity 3” means
(a) an Error isolated to Software, for which there is a reasonable Workaround, or an Error that causes only a minor impact on the end-point client. Restriction in usage of one or more features of the licensed product with minor impact of necessary business functions. An anomaly may be easily circumvented, e.g., a product cosmetic anomaly or documentation flaw; end-point devices and/or Software may have been interrupted but recovered.

“Site” means the physical location where System(s) are installed as specified by Ordering Activity in Ordering Activity’s User Center account.

“Software” means the object code version of the intangible information constituting one or more computer or apparatus programs and the informational content of such programs, together with any Documentation supplied in conjunction with, and supplementing such programs, the foregoing being provided to Ordering Activity by way of electronic transmission or by being fixed in media furnished to Ordering Activity.

“Software Subscription” means registered access to modifications, corrections, and/or updates to Software; including Hot Fix Accumulators (HFAs), security fixes, Feature Packs, and/or major upgrades, provided to Ordering Activity by unlimited web download access or by mail upon Ordering Activity’s request. Software Subscription is a deliverable for all Support Contracts.

“Shelf Spare Unit(s)” means Check Point Hardware unit(s) that is stored at Ordering Activity’s Site and which is reserved for Hardware replacement usage only in case of failure of Ordering Activity’s Hardware which is covered under Check Point On-Site Hardware Support Plan.

“Support” means the technical Support and Hardware replacement services provided by Check Point directly to Ordering Activity as set forth in this Agreement.

“System(s)” means the Hardware, Software and Documentation that have been provided to Ordering Activity by Check Point or Check Point’s authorized resellers/partners.

“TAC” means Check Point Technical Assistance Center, which is staffed by Check Point Support personnel providing assistance with diagnosis and resolution of defects and/or failures in Check Point products.

“Workaround” means a change in the followed procedures or data to avoid error without substantially impairing use of the product.

b. CHECK POINT SUPPORT OBLIGATIONS:

Upon Contractor’s acceptance of a valid purchase order, and corresponding payment for that Support offering selected, Ordering Activity will be entitled to receive Support according to the features and benefits provided under that offering, subject to these terms and conditions.

i. Technical Support:

For Ordering Activities covered under a valid Check Point Support offering, technical Support will be provided pursuant to the terms of this Section “TECHNICAL SUPPORT.” Contractor through Check Point agrees to provide Support, where appropriate, to Ordering Activity, which may include but is not limited to, the following actions:

(a) Provide Ordering Activity with access to product update releases, related Documentation and knowledge articles, upon general commercial release;

(b) Provide Ordering Activity with access to TAC Technical Representatives, who will work with Ordering Activity to diagnose issues, and provide Problem Resolutions, including escalating the issue through TAC management as needed.
ii. Hardware Replacement. For Ordering Activities covered under Hardware Support, Contractor through Check Point will use commercially reasonable efforts to provide Hardware replacement in accordance with the terms set forth in the Section “HARDWARE REPLACEMENT.”

iii. On-site Hardware Support. For those Ordering Activities whose Hardware Support level includes an on-site service feature, upon Ordering Activity’s request, after TAC determines that the hardware issue is related to a malfunction of one of the Hardware components, and after a repair action plan has been defined. Contractor through Check Point will use commercially reasonable efforts to dispatch a Check Point Certified Onsite Technician or ACE Partner to the Site in accordance with the terms and timeframes of such plan as set forth on Exhibit A. Provision of on-site support is subject to the following limitations:

(a) On-site Hardware Support is limited to Advance Hardware Replacement only; it does not include on-site service for Software troubleshooting or any Software related issues.

(b) On-site Hardware Support service may not dispatch a certified technician on-site to help set up the RMA unit outside of Check Point’s normal on-site service areas (http://www.checkpoint.com/services/onsite-availability.html). Under those situations, Check Point may provide a Shelf Spare solution under specific conditions to ensure a rapid unit replacement at the Ordering Activity’s site. Ordering Activity will need to sign up for this service under a separate Shelf Spare Replacement Agreement.

(c) On-site service response times may be dependent upon the Ordering Activity’s Site address for the Hardware, the timely arrival of replacement parts at Ordering Activity’s Site, and accessibility to the Site. On-site Hardware Support is effective one (1) month from the day it was purchased.

iv. On-site Software Support for Critical Severity 1 Issues. For those Ordering Activities covered under Elite Support, the Ordering Activity shall contact Check Point TAC directly by telephone. After TAC confirms that the matter is a Severity 1 issue, TAC and the Ordering Activity will work diligently, with highly skilled, experienced engineers to resolve the critical situation and to restore operation. In the case the criticality of the issue remains or no progress is made, after four (4) hours, Contractor through Check Point will use commercially reasonable efforts to dispatch a local engineer to Ordering Activity’s Site. If no local resources are available, travel arrangements will be made for the next available flight to the Ordering Activity’s Site. The engineer will remain on-site until the issue is no longer defined as critical (an acceptable resolution or workaround was achieved) or up to three (3) days, with travel and expense included. Provision of on-site critical Severity 1 case support under Elite Support is subject to the following limitations:

(a) An Elite Ordering Activity is entitled up to three (3) visits on-site a year as required to resolve critical Severity 1 cases.

(b) On-site critical case Support is limited to Software Support only, and does not include on-site service for Hardware issues and Hardware replacement.

(c) On-site critical case Support may not be available for some Check Point Software products or in some geographic regions, and may require a set-up period before it can be made available to Ordering Activities.

(d) For Elite support service for critical issues, which requires fast arrival to the site, Contractor through Check Point will cover all locations which are accessible within 12 hour elapsed commercial travel time from G7 countries hubs (US (mainland), UK, Germany, Italy, France, Japan, and Canada). In some remote locations, entry certifications requirements might add additional time to the engineer arrival on site.

(e) It is necessary that Elite Ordering Activities commit the necessary resources around the clock (24x7) in working with Check Point TAC and/or the engineer towards Problem Resolution of Severity 1 Errors.

v. Support Lifecycle.

(a) Contractor through Check Point provides Support on the then-current Major Release and the Previous Sequential Release of all the Software products covered under a valid Software support plan. Check Point will also provide commercially reasonable technical assistance on all Software Products for a minimum of four (4) years, starting from the general availability date of the product’s Major Release version. General availability date is defined as the date on which a product is officially made available for purchase, but Problem Resolution may be limited to the current Major Release of the product.

(b) Contractor through Check Point usually ends Software Support for a Major Release version only when the second subsequent major version has been released, or at least four (4) years have elapsed since the release of the major version in question. Check Point will provide End of Support notification for discontinued Software to Ordering Activity through an announcement posted on the Check Point Software Support Timeline website at URL: http://www.checkpoint.com/services/lifecycle/support_periods.html.

(c) Contractor through Check Point provides a comprehensive support lifecycle for its Hardware. Check Point TAC is available for Technical Assistance for up to five (5) years after Check Point’s new appliance availability announcement. The supported version includes the combination of the exact Hardware model number and the specification with the Check Point Software installed on it.

(d) For Software or Operating System installed on Check Point Hardware:

   a. The then-current Major Release of the Software that was installed on the Hardware is fully supported until one (1) year after Check Point’s new appliance availability announcement.

   b. Maintenance releases/bug fixes are supplied for up to three (3) years after new appliance availability announcement. These fixes may require a Software upgrade by the Ordering Activity.
c. Fixes and Software upgrades will be supplied to handle support issues for up to five (5) years after Check Point’s new appliance availability announcement. New Software releases may require the purchase of Hardware upgrades by the Ordering Activity.

(e) Contractor through Check Point provides Hardware Replacement for up to five (5) years after Check Point’s new appliance availability announcement. Hardware shall be repaired or replaced with same or similar products when needed, at Check Point’s discretion.

(f) Contractor through Check Point will provide the date of Check Point’s new appliance availability announcement and End of Support notification for discontinued Hardware to Ordering Activity through an announcement posted on the Check Point Appliance Support Timeline website at URL: http://www.checkpoint.com/services/lifecycle/appliance support.html.

(g) Contractor through Check Point reserves the right to modify Support Lifecycle policy at any time; notifications regarding changes in policy will be posted on the websites.

vi. Nonconformance. If Contractor through Check Point determines the problem is due to nonconformance to published specifications of a Software version, or another substantial Check Point related problem, then under Check Point’s Support plan, Check Point shall provide any Software fix for the reported nonconformance that may be available at the time the problem is reported. If no such fix is available, Check Point will use commercially reasonable efforts to remedy such nonconformance, which may include a Workaround or other temporary fix to the Software.

vii. Exclusions.

Support does not include the following items or actions:

(a) Step-by-step installation of Software or Service Packs;

(b) Onsite services (unless Ordering Activity’s level of Support, as purchased, includes this feature), Professional Services, or Educational Services;

(c) Modification of software code, security-policy configuration, audits, or security design.

Contractor through Check Point shall have no obligation to Support:

(a) An altered, damaged, or modified product or any portion of the product incorporated with or into other software, hardware, or products not specifically approved by Contractor through Check Point;

(b) Product problems caused by Ordering Activity negligence, misuse, misapplication, or use of the product other than as specified in the Check Point user manual, or any other causes beyond the control of Contractor through Check Point;

(c) Product installed on any computer hardware that is not supported by Contractor through Check Point;

(d) Product not purchased from the Contractor’s then-current GSA Price List;

(e) Products subjected to unusual physical or electrical stress, misuse, negligence or accident, or used in ultra-hazardous activities;

(f) Products that are past their End-of-Support date.

Contractor through Check Point shall have no obligation to Support Ordering Activity if:

(a) Appropriate payment for Support has not been received by Contractor; or

(b) Ordering Activity’s annual Support term has expired without renewal.

viii. Reporting Non-Check Point Errors to Ordering Activity. Upon working the Service Request under normal processes, and with appropriate management review, if at that point Contractor through Check Point believes that a problem reported by Ordering Activity may not be due to an error in the Check Point product, Check Point will notify Ordering Activity. At that time, Ordering Activity may: (a) instruct Check Point to proceed with problem determination at Ordering Activity’s possible expense as set forth herein; or (b) instruct Check Point that Ordering Activity does not wish the problem to be pursued at Ordering Activity’s possible expense.

If Ordering Activity requests that Contractor through Check Point proceed with problem determination at Ordering Activity’s possible expense and Check Point determines that the error was not due to the error in the product, Ordering Activity shall pay Contractor, at the Contractor’s Check Point then-current GSA rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Ordering Activity shall not be liable for:

(a) problem determination or repair to the extent the problems are due to anomalies in the Check Point product; or

b) work performed after Ordering Activity has notified Contractor through Check Point that it no longer wishes problem determination to be continued at Ordering Activity’s possible expense (such notice shall be deemed given when actually received by Check Point).

If Ordering Activity instructs Contractor through Check Point that it does not wish the problem pursued at Ordering Activity’s possible expense or such determination requires effort in excess of Ordering Activity instructions, Check Point may, at its sole discretion, investigate the anomaly with no liability thereof.
c. ORDERING ACTIVITY OBLIGATIONS:

i. Staffing. All Ordering Activity personnel contacting Contractor through Check Point for Support must be fully trained on both the Major Release of the Check Point Software and/or Hardware and the current issue for which Ordering Activity requires assistance.

ii. Named Designated Contacts. Ordering Activity agrees that contact with Contractor through Check Point will be through the specified number of Designated Contacts. Ordering Activity is responsible for specifying and updating valid Designated Contacts in the Check Point User Center with person-specific email addresses. Ordering Activity agrees that access to any Support deliverable, Software Subscription downloads and SecureKnowledge will be through these Designated Contacts, not any alias. The ability to add additional contacts may be purchased per the prevailing Support Plan program guidelines.

iii. Network Access. To the extent possible, and as requested by Contractor through Check Point, Ordering Activity understands that it may be necessary to provide Check Point or its authorized Technical Representative access to the affected network environment for any Severity 1 issue, or when Check Point determines that its Technical Representative needs to access Ordering Activity’s network in order to remotely diagnose an issue. Ordering Activity understands that if access is not provided as requested by Check Point, problem determination will be slower or impaired.

iv. Configuration Files. Ordering Activity agrees to maintain a backup of the configuration that can be used to restore the Hardware.

v. System Information. Ordering Activity must provide to Contractor through Check Point information for each System under a Support Plan by registering all products in the Ordering Activity’s User Center Account with accurate details:

   (a) Product License Key or Device Number;

   (b) Physical Site location of the Hardware product; and

   (c) Site contact person.

If Ordering Activity physically moves any Hardware from the original Site to another location, Ordering Activity must inform Contractor through Check Point of such change immediately with updated Site location and contact. It is Ordering Activity’s responsibility to update such change in the Ordering Activity’s User Center Account. Prior to Check Point’s receipt of such notification from Ordering Activity, Check Point shall not be liable for any lapses in service coverage or Hardware delivery delays with respect to such Hardware.

vi. Backup and Removal of Data. To reconstruct lost or altered Ordering Activity files, data, or programs, Ordering Activity must maintain a separate backup system or procedure that is not dependent on the Software or Hardware products under Support.

Where applicable, before receiving Hardware Replacement Services or before disposal or return of Hardware to Contractor through Check Point, Ordering Activity agrees to:

   (a) backup and secure all programs and data contained in the Hardware;

   (b) securely erase all programs and data not provided by Contractor through Check Point with the Hardware product. Ordering Activity acknowledges that, to perform its responsibilities under this Replacement Service, Check Point may ship all or part of the Hardware product or its Software to third party locations around the world, and Ordering Activity authorizes Check Point to do so; and

   (c) remove all features, parts, options, alterations, and attachments not provided by Contractor through Check Point with the Hardware product, and ensure that the Hardware is free of any legal obligations or restrictions that prevent its exchange.

vii. On-site Access. Where applicable, Ordering Activity agrees to provide Contractor through Check Point or its authorized partner with sufficient and safe access to Ordering Activity’s facilities in order to permit Check Point to fulfill its obligations.

viii. Shelf Spare Units. In the event that Ordering Activity has purchased Hardware Support with a Shelf Spare Replacement solution, Ordering Activity agrees that Contractor through Check Point shall, at all times, remain the sole owner of the Shelf Spare Unit(s) stored at the Ordering Activity’s premises. Ordering Activity agrees that each Shelf Spare Unit stored at Ordering Activity’s on-site location is to be used ONLY in case of Hardware failure approved by Check Point’s TAC. Each Shelf Spare Unit’s on-site location will be required to take an inventory of Hardware physically in stock on a quarterly basis and provide the results to the Check Point Logistics at logistics-reports@checkpoint.com. If it has been determined that the Shelf Spare Unit on-site location does not have the relevant Check Point inventory in stock and the missing inventory cannot be found or accounted for, or if the inventory is damaged as result of Ordering Activity’s practices, the item shall be considered lost, and Check Point shall have the right to seek reimbursement from the Ordering Activity at the standard Check Point list price.

In the case that Contractor through Check Point will certify a local ACE Partner or subcontractor to provide the on-site Replacement Service, Check Point shall have the right to ask the Ordering Activity to send, at Check Point’s expense, the Shelf Spare Unit from the Ordering Activity premises to the relevant partner at any time. In case this Support Plan is not renewed, Ordering Activity agrees to send the Shelf Spare Unit back to Check Point, or pay the full Check Point list price of a new unit.

d. HARDWARE REPLACEMENT:

i. Hardware Return Procedure. If a Hardware product or one of its component parts does not function during the Hardware Support period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide Advance Hardware Replacement service with a refurbished part/unit for the Hardware under the type of Hardware Support Plan Check Point designates for that Hardware. A defective Hardware product or one of its component parts may only be returned to Check Point upon Check Point’s prior written approval. Any such approval shall reference a Returned Material Authorization (“RMA”) number issued by an authorized Check Point service representative. To request an RMA number, Ordering Activity must contact Check Point TAC and open a Service Request. Ordering Activity
should always register the Hardware Product in Ordering Activity’s Check Point User Center account. If Ordering Activity does not register the Hardware Product with Check Point, Ordering Activity may be required to present proof of purchase as evidence of entitlement to Hardware Support service. The Hardware Product’s Device Number will be required for all RMA cases.

ii. Hardware Replacement Procedure. For Order Activities who have purchased Support for their Hardware, Contractor through Check Point will attempt to diagnose and resolve problem over the phone or web. Upon determination that the Hardware issue is related to a malfunction of one of the Hardware components, an RMA process will be initiated by Check Point TAC. Check Point TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement. Check Point will send the required hardware to the Site location, as it appears in Order Activity’s User Center and as verified with Order Activity when opening the Support Service Request, in accordance with the Hardware Support Plan Check Point designates for that Hardware.

Order Activity must ship back the faulty Hardware product (or replaceable unit) suitably packaged according to the guidelines, as specified by Contractor through Check Point in the RMA letter shipped with the replacement, to a location that Check Point designates; return shipment of the faulty Hardware should be made within five (5) business days of the arrival of the replacement or approval of the RMA for Shelf Spare Unit usage.

e. TECHNICAL SUPPORT:

i. Web-based Support. Check Point web-based Support available at URL: https://support.checkpoint.com provides the Ordering Activity access to:

(a) Documentation, containing product documentation, release notes, troubleshooting guides and technical white papers about Check Point Software and Hardware products, as releases become generally commercially available.

(b) SecureKnowledgeSM, a self-service knowledge base, restricted repository of thousands of technical documents as well as tools covering everything from planning installation and upgrades, to understanding error messages and fixing specific known issues. Technical solutions, how-to’s, and troubleshooting documents written by Check Point engineers and technical staff are added daily. Ordering Activity may have Advanced or Expert Access in accordance with their Support level and the specifications of this Agreement. When a solution is identified to solve an issue, Check Point TAC may share this solution with Ordering Activity via email or verbal communication.

(c) Software Subscription Downloads, restricted download site for the sole use of the Supported Ordering Activity; includes latest product upgrades, Hot Fix Accumulators (HFAs), Feature Packs, security fixes, tools, and utilities for the contract term. Software Subscription guarantees that Check Point solutions are kept as current as possible through the latest product enhancements and capabilities.

For Major Product releases, Ordering Activity may request Contractor through Check Point to ship a Media Kit that includes Software upgrade package.

(d) Product Forums, containing shared knowledge of Check Point products and solutions within an online community of customers, partners and employees, as well as news on Check Point products and technologies. Support Ordering Activity can view and post on the discussion threads in all Forums.

ii. Contact TAC. Ordering Activity’s access to TAC should be either by telephone, by web request, or by live chat.

(a) By Telephone: Contact the nearest TAC (refer to URL: http://www.checkpoint.com/services/contact/index.html.) An Automatic Call Distribution System will prompt Ordering Activity to select appropriate Support Plan options. After Ordering Activity is directed to a TAC Technical Representative, Ordering Activity’s email address must be provided. Once TAC verified Ordering Activity is a Designated Contact and account has a valid Support contract, TAC will inquire information about the issue and create a Service Request in the Check Point database.

(b) By Web Request: Log into User Center, under the “Support” Tab, select the “Create Service Request” link. Complete the request form with all of the appropriate information about the issue and submit the request. A Service Request will be generated in the Check Point database.

PLEASE NOTE: DO NOT submit a Service Request for a Severity 1 issue via the Web request form. For a Severity 1 case, please contact Contractor through Check Point by telephone and select the appropriate options for your support.

(c) By Live Chat: Log into User Center, under the “Support” Tab, select “Live Chat” icon. Live Chat is for quick and simple questions about Check Point products and services. Any issue requires troubleshooting must be submitted by telephone or by web request.

(d) By Email: Contractor through Check Point does not allow opening a Service Request via email. All requests should be opened by Telephone or by web request. Correspondence on an open Service Request may be made via email, as long as the Ordering Activity Designated Contact writes a reply to emails received from Check Point TAC.

Availability and accessibility of TAC is in accordance with the specifications of this Agreement, subject to the situations set forth in Section 8.1 Force Majeure.

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<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Premium</th>
<th>Elite</th>
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</thead>
<tbody>
<tr>
<td>TAC Availability</td>
<td>5x9 Business Day</td>
<td>7x24 Every Day</td>
<td>7x24 Every Day</td>
</tr>
<tr>
<td>Unlimited Service Requests</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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</table>
iii. Technical Support Procedures. Under Check Point's Software support plan, Check Point TAC utilizes a multi-tier support model for Problem Resolution. When initial contact with TAC is made, a Technical Representative or Web Service Request Tool will validate Ordering Activity information, contract information, Device Number, and gather details relevant to the question or issue. A unique Service Request (SR) number will be assigned and delivered to the Ordering Activity Designated Contact, either verbally, via Web request, or via email. This SR number will be used to track any given issue from initial contact to final Problem Resolution. If appropriate, an issue will be reproduced in the Check Point Test Lab. Additional testing and problem duplication may take place in a network laboratory environment. Further investigation, including additional troubleshooting or debugging activity may be required. Based on the results of the Test Lab investigation, an issue may be resolved, or, if an anomaly is identified, elevated to the appropriate Check Point Team for final Problem Resolution.

Contractor through Check Point agrees to use commercially reasonable efforts to work with the Ordering Activity for Problem Resolution for an issue in accordance with the specifications of these terms. Timely efforts must be made by all parties involved. If communication from Ordering Activity ceases without notice, after five (5) business days, Check Point may, upon notice, close a Service Request due to inactivity on the part of the Ordering Activity. A Service Request may be reopened within thirty (30) consecutive days of closure. Once a Service Request is closed for thirty (30) consecutive days, this issue will be considered permanently closed, and cannot be reopened. If further work is necessary, a new Service Request will be opened, and all pertinent materials may need to be resubmitted before work can continue.

iv. Severity Level Response Time and Resource Commitment. Contractor through Check Point agrees to use commercially reasonable efforts to respond to Ordering Activity requests based on the Severity of the issue as follows:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Response Time (in accordance with Support Plan)</th>
<th>Commitment</th>
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<tbody>
<tr>
<td></td>
<td>Standard</td>
<td>Premium</td>
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<tr>
<td>Severity 1</td>
<td>30 minutes</td>
<td>30 minutes</td>
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<tr>
<td>Severity 2</td>
<td>4 Hours</td>
<td>2 Hours</td>
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<tr>
<td>Severity 3</td>
<td>4 Hours</td>
<td>4 Hours</td>
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<tr>
<td>Severity 4</td>
<td>4 Hours</td>
<td>4 Hours</td>
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</table>

Check Point and Ordering Activity will commit the necessary resources around the clock for Problem Resolution to obtain workaround or reduce the severity of the Error.

Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution to obtain workaround or reduce the severity of the Error and alternative resources during non Standard Business Hours.

Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution, to obtain workaround or reduce the severity of the Error.

Check Point and Ordering Activity will provide Resources during normal business hours for Problem Resolution.

Note: Contractor through Check Point does not guarantee the resolution of a problem within the times specified.

For Severity definitions for Network Security Product(s) or Endpoint Security Product(s), refer to the Section “DEFINITIONS,” “Severity” Definitions for Network Security Product(s) and “Severity” Definitions for Endpoint Security product(s).

The response times set forth in this Section constitute targeted goals of the Technical Support to be provided by Contractor through Check Point to Ordering Activity, and it is understood that Check Point shall use commercially reasonable efforts to respond to Ordering Activity requests within the target times set for the relevant Severity level. The parties acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic failure to meet targeted times shall not constitute a breach of Check Point Support obligations under this Agreement.


(a) Ordering Activity-initiated Escalation: Under Check Point's Support plan, some work items (especially those associated with critical situations) may need to be expedited. When this becomes the case, Ordering Activity shall notify Check Point TAC of the critical situation. If TAC determines that sufficient information has been provided by Ordering Activity and the escalation is accepted, Check Point will work with Ordering Activity on providing the appropriate solution. The escalation begins in accordance to Check Point standard business practices. Upon request, Check Point may provide an action plan to Ordering Activity that may include (but is not limited by): problem statement, next action items to resolve the issue and time estimates on these action items.

(b) Check Point Internal Escalation Process: When TAC determines an issue needs internal escalation, the issue receives a combination of increasing levels of engineering expertise and managerial attentions in accordance with Check Point standard business practice. Except for the case of a Ordering Activity-initiated Escalation in accordance with Section 5.5 (c) below, that issue need not be escalated to a higher managerial level until the Severity of the issue increases or progress toward resolution ceases or is unduly delayed.

(c) Management Escalation: If Ordering Activity feels that the issue is not moving forward in an appropriate timeframe to closure, and/or an issue requires managerial attention, for immediate escalation, Ordering Activity can either request Technical Representative to connect the Ordering Activity to a Team Leader or contact the Team Leader of the Technical Representative handling the case directly. Team Leader’s contact details are located at the bottom of the Service Request email. Regardless of the total elapsed time of an outstanding Service Request, the point of escalation shall be initiated at the Technical Representative level, escalated to the Team Leader(s), followed by TAC Manager(s), the TAC Director(s), and then the TAC Vice President. For the most current list of Check Point TAC Escalation Management contacts, refer to Escalation Management link in Service Request Web tool in the User Center.

e. CHECK POINT DIRECT SUPPORT PLAN DESCRIPTIONS
i. **Check Point Support Offerings.** In order to meet the needs of its enterprise Ordering Activities, Contractor through Check Point offers its Enterprise Support program for the support of Check Point Software products. This provides a total support service solution directly to enterprise/business customers. Below, are the program levels available under Check Point’s direct Enterprise Support program:

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<thead>
<tr>
<th>Direct Enterprise Support</th>
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<tbody>
<tr>
<td>• Enterprise Software Subscription</td>
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<tr>
<td>• Enterprise Standard</td>
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<tr>
<td>• Enterprise Premium</td>
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<td>• Enterprise Elite</td>
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ii. **Support Plan Descriptions.**

a. **Enterprise Software Subscription:** Enterprise Software Subscription ensures uninterrupted security and protection for all Check Point products, with access to critical hot fixes, service packs, and major upgrades for a full year. Take advantage of the latest security features as soon as they're available, protecting your business and your investment while maximizing your ROI with Check Point solutions.
   - Ensure continuous security with access to critical hot fixes and service packs
   - Maximize ROI and investment with access to major upgrades and enhancements

b. **Enterprise Standard Support:** Check Point Enterprise Standard Support delivers all the benefits of Enterprise Software Subscription with comprehensive, unlimited support from our experienced and certified security experts. With online tools and extensive resources devoted to Check Point security, you can count on Check Point to resolve your mission-critical issues quickly and efficiently:
   - Software Subscription - Access critical hot fixes, service packs, and major upgrades
   - Protect your business with unlimited, comprehensive support from experienced engineers
   - Ensure business continuity with 5x12 business day Web, Chat and Phone support and 4 hour committed response
   - Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate, and track Service Requests online including active notifications via mail or SMS
   - Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on new materials posted in your subject area.
   - Appliance Support
     i. Replacement units shipped same business day; delivery usually within 2-3 business days
     ii. Efficient hardware diagnosis using advanced tools
   - Optional Upgrade to Standard Onsite Support
     i. 5x8x Next Business Day onsite service
     ii. Delivery and basic installation of replacement hardware by a certified engineer
     iii. Available in over 250 locations world wide

c. **Enterprise Premium Support:** Check Point Enterprise Premium Support delivers all the benefits of Enterprise Software Subscription with comprehensive, 24x7x365 unlimited support from our experienced and certified security experts. With online tools, global 24x7x365 service centers, and committed 30 minute response times, you can count on Check Point to resolve your mission-critical issues quickly and efficiently:
   - Software Subscription - Access critical hot fixes, service packs, and major upgrades
   - Protect your business with unlimited, comprehensive support from experienced engineers and 30 minute response with Fast Path to premium desk
   - Ensure mission-critical support with 7x24 support and 30 minute committed TAC response for severity 1 issues and 2 hour response for severity 2
   - Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate upon, and track Service Requests online including active notifications via mail or SMS
   - Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on any new material which posted in your subject area.
   - Appliance Support
     i. Replacement units are shipped by Next Flight-Out/ Express Delivery (in mainland US and European Union), Appliances are shipped during normal business hours and could arrive during off hours or next business day until 9AM.
     ii. Efficient hardware issue diagnosis using advanced tools
     iii. Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts
   - Optional upgrade to Premium On-site Support
     i. 7x24 hours onsite service
     ii. Delivery and basic installation of replacement hardware by a certified engineer
     iii. Available in over 250 locations world wide

d. **Enterprise Elite Support:** Check Point Elite delivers 7 x 24 x 365 support plus on-demand expert care wherever you need it. With committed response times, advanced self-help tools and priority handling. Elite Support will minimize business downtime and keep your network running.
   - 24-hour on-demand onsite engineer to resolve critical software cases
   - Fastest Response Times – 30 minutes for Priority 1 and 2 cases
   - Priority case handling and fast path escalations
   - Increased productivity and uptime with expert knowledge transfer, tools and techniques
   - Appliance Support
     i. Next flight out hardware replacement service
     ii. Enhanced Return Material Authorization (RMA) processing

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- Elite Onsite Support
  i. Extends the benefits of Elite Support with 4-hour RMA onsite hardware care for the fastest logistics. Check Point provides the delivery and basic installation of replacement hardware by a certified engineer with 4 hours following RMA determination.

e. **Direct Enterprise Support Price Calculation:** The cost of Enterprise Support is calculated using the account rate multiplied by the sum of product list price within the included account(s). Product list price is determined based on the product value in the current Check Point Price List. The account rate is based on the sum of product list price for all products included under the Enterprise Support contract. The applicable GSA discount will then be applied to the Ordering Activity:

<table>
<thead>
<tr>
<th>Program Name</th>
<th>Enterprise Software Subscription</th>
<th>Enterprise Standard Support</th>
<th>Enterprise Premium Support</th>
<th>Enterprise Elite Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part Number</td>
<td>CPES-SS</td>
<td>CPES-SS-Standard</td>
<td>CPES-SS-Premium</td>
<td>CPES-SS-Elite</td>
</tr>
</tbody>
</table>

Install Base Value (SW)

| <$50,000   | 15%                              | 30%                         | 40%                        | 43%                     |
| $50,001 - $100,000 | 14.5%                           | 28%                         | 36%                        | 39%                     |
| $100,001 - $250,000 | 14%                             | 26%                         | 33%                        | 36%                     |
| $250,001 - $500,000 | 13.5%                           | 24%                         | 30%                        | 33%                     |
| $500,001 - $1 million | 13%                             | 22%                         | 27%                        | 30%                     |
| $1 million and above | 12.5%                           | 20%                         | 24%                        | 27%                     |

f. **Appliance Support:** Check Point Appliance Support provides comprehensive solution for HW & SW support, including diagnosis, resolution, and parts/unit replacement services when applicable, according to SLAs corresponding with Check Point's support programs.

Direct Appliance Support (EBS) – List price of the support is calculated by multiplying the applicable rate in the below table, times the list price of the applicable appliance. The applicable GSA discount will then be applied to the Ordering Activity. The exception is for legacy 2 blade appliances, list price is established as explained in the below table:

<table>
<thead>
<tr>
<th>Product Range</th>
<th>Standard</th>
<th>Standard RMA Next business day onsite**</th>
<th>Premium*</th>
<th>Premium RMA 4 hours onsite**</th>
<th>Elite***</th>
<th>Elite RMA 4 hours onsite**</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
<td>Standard RMA Next business day onsite**</td>
<td>Premium*</td>
<td>Premium RMA 4 hours onsite**</td>
<td>Elite***</td>
<td>Elite RMA 4 hours onsite**</td>
</tr>
<tr>
<td></td>
<td>CPES-SS- STANDARD</td>
<td>CPES-SS- STANDARD</td>
<td>CPES-SS-PREMIUM</td>
<td>CPES-SS-PREMIUM</td>
<td>CPES-SS-ELITE</td>
<td>CPES-SS-ELITE</td>
</tr>
<tr>
<td>High End</td>
<td>12%</td>
<td>20%</td>
<td>17%</td>
<td>23%</td>
<td>20%</td>
<td>26%</td>
</tr>
<tr>
<td>Mid Range</td>
<td>12%</td>
<td>22%</td>
<td>17%</td>
<td>25%</td>
<td>20%</td>
<td>28%</td>
</tr>
<tr>
<td>Low End</td>
<td>12%</td>
<td>27%</td>
<td>17%</td>
<td>30%</td>
<td>20%</td>
<td>33%</td>
</tr>
<tr>
<td>2 Blade appliance x2 series (like UTM-1 272,572 or NGX non Total Security)</td>
<td>Standard account rate</td>
<td>Standard account rate + 10%</td>
<td>Premium account rate</td>
<td>Premium account rate + 8%</td>
<td>Elite account rate</td>
<td>Elite account rate + 8%</td>
</tr>
</tbody>
</table>

* Next Flight Out/Express Delivery is available in the European Union and mainland US. Appliances are shipped during normal business hours and may arrive during off hours or next business day until 9AM.

** Onsite services are provided worldwide by Check Point certified technicians. For available locations click here.

*** Emergency engineer dispatch for critical software issues for more info click here

For other locations contact Check Point Onsite services.

Note: Onsite Hardware Support becomes effective one (1) month from the day it was purchased.

Note: All other Check Point appliances that do not appear in the Appliance Classification table receives regular account rate and no onsite service is available.

Note: customers may upgrade support for specific appliances based on their operational needs regardless to the customer's User Account Service Level Agreement.

Appliance classification:

<table>
<thead>
<tr>
<th>Appliance Range</th>
<th>Security Gateway Appliances</th>
<th>Smart-1</th>
<th>VSX-1</th>
<th>Dedicated Gateways</th>
</tr>
</thead>
<tbody>
<tr>
<td>High End</td>
<td>12400 Appliances</td>
<td>Smart-1 50</td>
<td>VSX 12400</td>
<td>DLP-1 9571</td>
</tr>
<tr>
<td></td>
<td>12800 Appliances</td>
<td></td>
<td>VSX 12600</td>
<td>IPS-1 9070</td>
</tr>
<tr>
<td></td>
<td>21400 Appliances</td>
<td></td>
<td>VSX 21400</td>
<td>IPS-1 5070</td>
</tr>
<tr>
<td></td>
<td>61000 Appliances</td>
<td></td>
<td>VSX-1 3070</td>
<td>Connectra 9072</td>
</tr>
<tr>
<td></td>
<td>Power-1 5075 / 5077</td>
<td></td>
<td>VSX-1 9070</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Power-1 9075 / 9077</td>
<td></td>
<td>VSX-1 9090</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Power-1 11xxx series</td>
<td>VSX-1 11xxx series</td>
<td>VSX-1 112xx series</td>
<td></td>
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<tr>
<td>----------------------</td>
<td>----------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td>IP 1285 / 1287</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IP 2455 / 2457</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mid Range</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4600 Appliances</td>
<td>4800 Appliances</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UTM-1 274 / 276 / 278</td>
<td>UTM-1 574 / 576 / 578</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UTM-1 1073 / 1075 / 1078</td>
<td>UTM-1 3073 / 3075 / 3076 / 3078</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IP 295 / 297</td>
<td>IP 395 / 397</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IP 565 / 567</td>
<td>IP 695 / 697</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VSX-1 1122xx series</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VSX-1 1125</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VSX-1 12200</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low End</td>
<td>2200 Appliances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UTM-1 134 / 136 / 138</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>SG86*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* On-site services for SG82 & SG86 include only product replacement (w/o a technician).
- The above special support-rates apply to Software Blades based Appliances with 3 blades (and above), NGX based UTM-1 Total Security and Power-1 Appliances only.
- For NGX UTM-1 non Total-Security Appliances, please use the regular account rate.
- UTM-1 Edge RMA is shipped Next Business Day for all SLAs.
- Regular account rates apply to all other Check Point appliances that do not appear in the above table (e.g. UTM-1 Edge) and no on-site services are available (excluding 2 Blade appliances or NGX non Total Security).
- For IAS (Integrated Appliance Solutions) support offering and rates contact Check Point Onsite Services.
- For UTM-1 xx50 series, you can purchase only Premium/Standard/Elite Support, On-site Services are not available (unless it is on-site renewal).
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Checkmarx, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1. DEFINITIONS.

1.1. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and “control” means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

1.2. “Effective Date” means the date this Agreement is fully executed by both Parties.

1.3. “Intellectual Property Rights” means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

1.4. “Fees” means the Service fees charged by Licensor to Customer, as set forth in the Quote and applicable purchase order in accordance with the GSA Price List.

1.5. “Named User” means the license is tied to a specific individual named user so that the license may only be used by that individual named user.

1.6. “Quote” means the quotation document provided by Licensor setting out the quantity and type of Service licenses purchased by Customer.

1.7. “Service” means the Codebashing e-learning cloud-based interactive application security tutorial service.

1.8. “Term” means the term of this Agreement, as further forth in Section 6.1.

2. LICENSE GRANTS AND RESTRICTIONS.

2.1. License Grants. Licensor grants the Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”) a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the Term and according to the number of Named User licenses set out in the Quote and applicable purchase order, to permit licensed users to access the Service and to view and use the reports generated by the Service for Customer’s internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the source code of the Service. The Named User license is activated upon the first log-in of the Named User and may not be transferred thereafter to another Named User.

2.2. Title; Intellectual Property Rights. The Service is licensed, not sold, and this Agreement does not convey any right, title or ownership in the Service to Customer other than the limited rights and licenses set out herein. The Service and its associated documentation shall remain the sole property of Licensor. All Intellectual Property Rights evidenced by or embodied in or related to the Service, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor. Licensor reserves all rights not expressly granted hereunder.

2.3. Restrictions. Customer may not: (a) use the Service in excess of the number of Named User licenses authorized by Licensor (for paid use, according to the number of Named User licenses purchased, as set out in the purchase order); (b) work around any technical limitations in the Service or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the Service; (d) attempt to derive the source code of the Service; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the Service to any third party, including Customer’s Affiliates; (f) transfer, assign or permit the sharing of license keys or product codes to a third party, including Customer's Affiliates; (g) attempt to access the Service outside of the interfaces provided by Licensor; (h) in any manner access the Service or any part thereof or use the Service to Customer other than the limited rights and licenses set out herein.  Licensor shall have the exclusive right to control the use of the Service and all goodwill associated therewith.

2.4. Additional Terms and Restrictions. Customer agrees that: (a) all use of the Service shall be in compliance with all applicable laws; (b) the Service is being supplied only for Customer's internal use; (c) Customer is prohibited from granting any sublicenses to use the Service; and (d) Customer may not copy, transfer or communicate the Service or any part thereof to any third party, including Customer’s Affiliates, or the public in violation of this Agreement.

3. DATA USAGE.

3.1. Data Usage. The Service collects usage data, analytics data, and the usernames and email addresses of the users of the Service (the “Data”). Licensor and its authorized third party service providers will use the Data for the purpose of providing the Service to Customer. Licensor may also use the Data to improve the Service and for the internal business purposes of Licensor and its Affiliates.

4. SUPPORT.

4.1. Description of Support. Service availability and uptime is set out in Exhibit A. Licensor will provide support for the Service during the Term in accordance with the service level agreement attached hereto as Exhibit B.

5. RESERVED.

6. TERM AND TERMINATION

6.1. Term. This Agreement shall be effective during the license term set out in the purchase order, unless renewed by written agreement of the Parties or earlier terminated according to the termination provisions set out in the underlying GSA Schedule Contract.

6.2. Reserved.

6.3. Effect of Termination. Customer’s access to the Service shall immediately terminate upon expiration of the Service Term or the termination of this Agreement, and any reports or data generated in connection with the Service will no longer be available for viewing/downloading. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the Service. Licensor shall have no liability due to the Customer’s inability to access or use the Service after expiration of the Service Term or termination of this Agreement.
6.4. **Survival of Certain Provisions.** The Parties’ rights and obligations contained in Sections 2.2 (“Title; Intellectual Property Rights”); 6.3 (“Effect of Termination”); and 8.0 (“General Provisions”); as well as any obligations to make payments of Fees or other amounts accrued or due hereunder prior to termination, shall survive any termination of this Agreement.

7. **DISCLAIMER OF WARRANTIES.**

7.1. **LIMITED WARRANTY.** Licensor warrants that the Service will, for a period of sixty (60) days from the date Customer is first provided access to the Service, perform substantially in accordance with Service written materials accompanying it subject to Customer’s use of the Service in accordance therewith. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICE IS MADE AVAILABLE BY LICENSOR ON AN “AS IS” AND “AS AVAILABLE” BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED AND/OR ERROR FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE SERVICE WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING Restricts THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

7.2. **RESERVED.**

7.3. **EXCLUSIVITY OF WARRANTIES.** CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER’S USE OF THE SERVICE AND ANY CLAIM ARISING OUT OF OR IN RELATION TO THIS AGREEMENT.

8. **GENERAL PROVISIONS.**

8.1. **Exclusions.** The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to this Agreement. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

8.2. **Headings and Wording.** Section and/or paragraph headings used in this Agreement are for reference purposes only and shall not be used in the interpretation hereof. No provision of this Agreement shall be construed against either Party as the drafter thereof.

8.3. **Assignment.** This Agreement may not be assigned, delegated or transferred by either party without the other party’s written consent, and any attempt to take such action shall be void and without effect.

8.4. **Restricted Parties.** Customer represents and warrants that it is not a “Restricted Party,” which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions; (a “Prohibited Territory”) or (b) on the U.S. Department of Commerce Denied Person’s List, Entity List, or Unverified List; the U.S. Department of the Treasury’s list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State’s list of Debarred Parties. Customer shall not distribute, transfer or permit access to any Licensor software or service to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Licensor and, as appropriate, any relevant government agency.

8.5. **Entire Agreement.** This Agreement, including any Exhibits, Quotes, and purchase orders incorporated by reference, and the underlying GSA Schedule Contract constitute the entire agreement between Licensor and Customer, and any and all written or oral agreements relating to the license of Licensor’s Software existing between Licensor and Customer, including but not limited to any Software evaluation license agreement, shall not be supplemented, modified or otherwise contained in this Agreement.

8.6. **No Waiver.** The failure of either Party to enforce at any time, or for any period of time, the provisions of this Agreement shall not be interpreted to be a waiver of such provisions or of the right of such Party to enforce each and every such provision.

8.7. **Partial Invalidation.** In the event that any provision of this Agreement shall be held by law, or found by a court or other tribunal of competent jurisdiction to be unenforceable, the unenforceable provision shall be severed and the remaining provisions of this Agreement shall remain in full force and effect. In such an event, Licensor and Customer agree to negotiate in good faith a substitute provision that most nearly reflects the intent of the severed provision.

8.8. **Relationship of Parties.** The Parties hereto are independent contractors. Nothing contained herein or done in pursuance of this Agreement shall create a principal-agent, partner, or other relationship between the Parties for any purpose or in any sense whatsoever, or create any form of joint enterprise whatsoever between the Parties.

8.9. **No Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of Licensor and Customer. No third party shall be deemed to be a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

8.10. **Amendment.** This Agreement may only be modified or supplemented by a written document executed by an authorized representative of each Party.

8.11. **Contracting Entity.** For Customers located in the United States of America, “Licensor” is defined as Checkmarx, Inc.

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**Exhibit A**

**SERVICE LEVEL AGREEMENT – UPTIME AND AVAILABILITY**

**Service Level Standard:** Licensor will provide no less than ninety-nine point five percent (99.5%) Services Availability, as calculated on an annual basis, subject to the Exclusions below.

“Availability” shall mean the portion (in percentage terms) of Uptime that the Hosted Services are Available for Use (as defined below):

\[
\text{Uptime} = \left\{ \frac{\text{Total Time} (24/7)}{\text{Scheduled Maintenance Windows}} \right\}
\]

% Availability = (Uptime – Time Unavailable) / Uptime

“Available for Use” shall mean that all of the supported functions and features of the Services are capable of sending and receiving data to and from the Internet. “Service Level Period” means 24x7: 24 hours a day, 7 days a week, 365 days a year.

“Time Unavailable” shall mean any period of time during the applicable Service Level Period that the Services are not Available for Use, except for the Exclusions set forth below. **Time Unavailable - Exclusions**

Time Unavailable shall not include the aggregate amount of time during which the Services are not Available for Use due to:
1. **DEFINITIONS.**

   (a) “**Bug**” means an error condition that causes the Service to fail to operate.

   (b) “**Normal Business Hours**” means Monday through Friday, 09:00 – 17:00, Customer’s local time, excluding public holidays.

   (c) “**Resolution Time**” means the time elapsed until a Workaround or permanent solution to a Bug has been provided in accordance with the resolution timelines set out below, according to the severity classification.

   (d) “**Workaround**” means a temporary error correction or change in operating procedure allowing Customer to continue to use the Service until a long-term solution has been provided.

All capitalized terms not defined above shall have the meaning set forth in the main body of the license Agreement, which is incorporated herein by reference.

2. **SUPPORT.**

   During the Term of the Agreement and subject to Customer’s payment of applicable Fees:

   (a) Licensor will provide technical support and assistance with respect to the Service, including: (i) clarification of functions and features; and (ii) technical support and assistance in the operation of the Service.

   (b) Licensor shall provide support during Normal Business Hours via telephone and email to Customer’s Support Contact Designee.

   (c) Licensor shall not be responsible for providing support for matters not directly involving problems with the Service, such as Customer network connectivity issues, interfaces with other systems, and third party products (software and/or hardware).

3. **RESPONSE AND RESOLUTION SCHEDULE.**

   Customer will initially classify each Bug in the Service based on the following schedule, and thereafter report such Bug or error to Licensor for correction. Licensor shall perform problem management in accordance with the priority level initially determined by Customer; however, the final classification of the priority level will be determined by Licensor in accordance with the table below:

<table>
<thead>
<tr>
<th>PRIORITY LEVEL</th>
<th>CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>Fatal: Bug preventing all use of the Service.</td>
</tr>
<tr>
<td>Priority 2</td>
<td>Severe Impact: Bug disabling major functions from being performed. This condition exists when the Service is partially inoperative, but is still usable by Customer and the impact is one of inconvenience.</td>
</tr>
<tr>
<td>Priority 3</td>
<td>Minimal Impact: Includes all other Bugs. This condition generally exists when the Service is usable and the problems consist of inconveniences or minor failures involving individual components of the system.</td>
</tr>
</tbody>
</table>

   Upon receipt of Customer’s service ticket initially classifying the priority of the problem, Licensor shall use commercially reasonable efforts to promptly contact Customer to confirm the priority level of the service call, and shall use commercially reasonable efforts to respond to, restore or resolve Bug related error reports and service calls according to the following schedule:

<table>
<thead>
<tr>
<th>PRIORITY LEVEL</th>
<th>RESOLUTION TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>1 to 2 business days</td>
</tr>
<tr>
<td>Priority 2</td>
<td>3 to 6 business days</td>
</tr>
</tbody>
</table>
4. CUSTOMER'S OBLIGATIONS DURING THE SERVICE TERM PERIOD.

(a) Customer shall notify Licensor of any Bugs and errors by sending an email to support@checkmarx.com.
(b) Customer shall appoint one support contact designee who will be Licensor’s single point of contact for support requests.
(c) Customer shall provide Licensor with all reasonably requested reasonable cooperation and assistance as required to provide support in accordance with the response times set out above. Licensor shall not be responsible for failure to meet its service level obligations to the extent caused by Customer’s failure to provide reasonable cooperation, support and assistance to Licensor.
(d) All support services are provided remotely. If Customer requires the use of specific remote connectivity software, it is customer's responsibility to license and operate such software. Remote Customer support shall be provided via WebEx or other mutually agreed means.

CHECKMARS OPEN SOURCE ANALYSIS (“OSA”) AGREEMENT

This Checkmarx Open Source Analysis Agreement (the “Agreement”) is made by and between the applicable Checkmarx entity identified below (“Licensor”), and the customer entity identified above (“Customer”) (as defined herein, each a “Party”, and collectively the “Parties”).

1. DEFINITIONS.

1.1. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and “control” means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

1.2. “Intellectual Property Rights” means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

1.3. “OSA Solution” means the cloud-based open source management solution provided to users of the licensed Checkmarx software by Licensor and its designated third party service provider(s). Depending on the configuration licensed by Customer, the OSA Solution may consist of a cloud-based open source management solution accessed using the licensed Checkmarx software (“CxOSA”), or CxOSA together with a standalone solution operated by the OSA Service Provider (“CxOSA-WS”).

1.4. “Quote” means the quotation document provided by Licensor setting out the quantity and type of OSA Solution licenses purchased by Customer.

2. LICENSE GRANTS AND RESTRICTIONS.

2.1. License Grants. Subject to Customer’s compliance with these OSA Terms, Licensor grants Customer a limited, non-exclusive, nontransferable, non-sublicensable, revocable license during the OSA Term and according to the number and type of OSA Solution licenses as set out in the Quote and applicable purchase order, to: (a) for CxOSA, to permit licensed users of the Checkmarx software to access the object code form of the OSA Solution through the applicable Checkmarx software interfaces; (b) for CxOSA-WS, to additionally access the object code form of the OSA Solution through the applicable OSA Service Provider interfaces; and (c) for either CxOSA or CxOSA-WS (as applicable) to view and use the reports generated by the OSA Solution for Customer’s internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the OSA Solution source code.

2.2. Title; Intellectual Property Rights. The OSA Solution is licensed, not sold, and these OSA Terms do not convey any right, title or ownership in the OSA Solution to Customer other than the limited rights and licenses set out herein. The OSA Solution and documentation shall remain Licensor’s or the OSA Service Provider’s property, as applicable. All Intellectual Property Rights evidenced by or embodied in or related to the OSA Solution, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor and the OSA Service Provider, as applicable. Licensor reserves all rights not expressly granted hereunder.

2.3. Restrictions. Customer may not: (a) use the OSA Solution in excess of the number and type of licenses authorized by Licensor (for paid use, as set out in the Quote); (b) work around any technical limitations in the OSA Solution or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the OSA Solution; (d) attempt to derive the source code of the OSA Solution; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the OSA Solution to any third party; (f) use the OSA Solution to provide code scanning or audit services to a third party, or make the OSA Solution available in a service bureau or any similar commercial time-sharing arrangement; (g) transfer, assign or permit the sharing of license keys or product codes to a third party; (h) make available to any third party any analysis of the results of the operation of the OSA Solution, including benchmarking results, without the express written consent of Licensor; (i) attempt to access the OSA Solution outside of the software interfaces provided by Licensor and/or the OSA Service Provider; or (j) provide access to the OSA Solution or the output generated by the OSA Solution to any individual who does not hold a valid license to use the OSA Solution.

3. DATA USAGE.

3.1. Data Usage. The OSA Solution transmits technical data to the OSA Service Provider as required to provide the OSA Solution to Customer (the “Data”). No source code of the Customer is sent to the OSA Service Provider. For CxOSA-WS, Customer must provide a customer ID and email addresses to the OSA Service Provider for authentication purposes.

3.2. OSA Service Provider. The cloud-based open-source analysis service powering the OSA Solution is operated by a third party service provider under contract to Licensor (the “OSA Service Provider”). The OSA Service Provider is contractually obligated to handle all Data on a confidential basis and to use the Data only in connection with providing the OSA Solution to Customer. Licensor reserves the right to change OSA Service Providers from time to time.

4. SUPPORT.
4.1. **Description of Support.** Licensor will assist with basic e-mail (Level 1) support to assist Customer with its use of the OSA Solution. Advanced (Level 2 and Level 3) support for the OSA Solution shall be provided by the OSA Service Provider. All support shall be provided in accordance with the support level agreement entered into between Licensor and the Customer in connection with the licensed Checkmarx software.

5. **RESERVED.**

6. **TERM AND TERMINATION.**

6.1. **Term.** These OSA Terms shall be effective during the OSA Solution term set out in the Quote and applicable purchase order (the “Term”), unless renewed by agreement of the Parties or earlier terminated according to the termination provisions set out in the underlying GSA Schedule Contract.

6.2. **Reserved.**

6.3. **Effect of Termination.** Customer’s access to the OSA Solution shall immediately terminate upon expiration of the Term or the termination of these OSA Terms in accordance with the Contract Disputes Act, and any reports or data generated in connection with the OSA Solution will no longer be available for viewing/downloading. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the OSA Solution. Licensor shall have no liability due to the Customer’s inability to access or use the OSA Solution after termination of these OSA Terms or expiration of the Term. In the event of termination, Customer’s sole and exclusive remedy shall be the refund of any unused OSA Fees remaining as of the date of termination.

7. **DISCLAIMER OF WARRANTIES.**

7.1. **WARRANTY DISCLAIMERS.** THE OSA SOLUTION IS MADE AVAILABLE BY LICENSOR ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE OSA SOLUTION WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE OSA SOLUTION WILL BE UNINTERRUPTED AND/OR ERROR FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE OSA SOLUTION WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

7.2. **RESERVED.**

7.3. **EXCLUSIVITY OF WARRANTIES AND LIMITATIONS OF LIABILITY.** CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER’S USE OF THE OSA SOLUTION AND ANY CLAIM ARISING OUT OF OR IN RELATION TO THESE OSA TERMS.

8. **GENERAL PROVISIONS.**

8.1. **Governing Law and Venue.** These OSA Terms shall be governed by and interpreted in accordance with the Federal laws of the United States. The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to these OSA Terms. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to these OSA Terms and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

8.2. **Miscellaneous Terms.** Should any provision of these OSA Terms be held to be invalid, such provision shall be replaced with a valid provision implementing the intent of the parties at the time of the signing of these OSA Terms. These OSA Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) supersedes any previous agreements or representations, either oral or written regarding the OSA Solution. Customer acknowledges that it has not relied upon any representations or warranties other than those expressly contained in these OSA Terms. These OSA Terms may be amended only by an instrument in writing signed by both parties. Customer or Licensor may not transfer or assign its rights or obligations under these OSA Terms to any third party without the prior written approval of the other party, and any such purported assignment shall be null and void. All notices given under these OSA Terms shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by facsimile transmission (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient; or on the third business day following posting, if posted by international courier service (FedEx, UPS, DHL).

8.3. **Contracting Entity.** For Customers located in the United States of America, “Licensor” is defined as Checkmarx, Inc.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Chef Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultants orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2L, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federallycompatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA
Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Attachment A – Chef Software Inc.

MASTER LICENSE AND SERVICES AGREEMENT

This Master License and Services Agreement ("Agreement") is entered into by and between the Ordering Activity purchasing under the GSA Schedule Contract ("Customer" or "Ordering Activity"), and Chef Software Inc., a Delaware corporation ("Chef").

1) Definitions. Capitalized terms used herein have the following definitions:

   a) "Affiliate" means any entity that is controlled by or under common control with Customer, where "control" means the ability whether directly or indirectly to direct the affairs of another by means of ownership, contract or otherwise.

   b) "Chef Proprietary Item" means any Software Usage and Technical Support Data, work, materials, or other tangible or intangible property used by Chef in the course of its performance under this Agreement or any Order Form that is (i) not a Deliverable; or (ii) developed by Chef independently of this Agreement. Inclusion of any Chef Proprietary Item in a Deliverable does not change its character as a Chef Proprietary Item.

   c) "Confidential Information" means any proprietary information received by the other party during or prior to entering into, this Agreement that is identified as confidential at the time of disclosure or that a party reasonably should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, the Software and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

   d) "Documentation" means any on-line help files, instruction manuals, operating instructions and user manuals created and provided by Chef that describe the use of the Software and either accompany the Software or are available at https://docs.chef.io and https://www.habitat.sh/docs/overview

   e) "Habitat Supervisor" means a process manager in Chef Habitat™ that (i) starts and monitors the child app service defined in a package; and (ii) receives and acts upon configuration changes from other Habitat Supervisors to which it is connected.

   f) "Intellectual Property Rights" means patent rights (including without limitation patent applications and disclosures), copyrights (including without limitation rights in audiovisual works and moral rights), trade secrets, trademarks, know-how, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

   g) "License Fee" means fees paid to Chef from Customer in exchange for Customer's right to use the Software as provided in this Agreement.

   h) "License Term" means the term during which Customer is permitted to use the Software, as described in the applicable Order Form.

   i) "License Unit" means a specific type of numeric quantity used in an Order Form to establish the extent and amount of Customer's license to Software. "License Unit" includes Node, Resource, and Service Instance.

   j) "Node" means each individual component of Customer's system - physical or virtual (i.e., server, workstation, IP router, Virtual Machine, or other device or component) that is assessed, installed, configured, updated, scanned and/or managed through the use of Chef Infra.

   k) "Order Form" means a separate document that references this Agreement and is signed by both Parties.

   l) "Professional Services" means any professional services performed by Chef for Customer pursuant to any Order Form.

   m) "Target" means each instance of infrastructure, software, configuration, or other technical resource that is the compliance target of one or more Chef Inspec profiles used by Customer.

   n) "Service Instance" means each single instance of an application service that has been packaged by Chef Habitat and is deployed to any environment, including but not limited to application services that are (a) managed by Habitat Supervisors, or (b) downstream of a pipeline that integrates the Habitat Builder service.

   o) "Services" means, collectively, Professional Services and Support Services.

   p) "Software" means the applicable software made available by Chef and referenced on an Order Form, including all updates, libraries, gems, databases, plug-ins, messaging services, authentication sub-functions, certificate management, and environments provided by Chef to Customer during the applicable License Term.

   q) "Support Services" means the technical support services described at https://www.chef.io/service-level-agreement/ or in any Order Form.
2) **License Grant and Support.** During the applicable License Term, and subject to Customer’s compliance with the terms and conditions of Sections 4, 6, 13, 16, and 18, Chef grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable license to (i) install and use the Software only for the internal use of Customer ("License"), (whether on premises or in the cloud, and including any information technology infrastructure for the benefit of Customer’s customers) and limited to the number of License Units for which Customer is current in the payment of the applicable License Fee and, (ii) to use the Documentation only for its internal operation and use.

   a) **Support.** During the applicable License Term, Chef will provide Customer Support Services for the Software as listed at https://www.chef.io/service-level-agreement at the "Standard" level, or as otherwise described in the applicable Order Form.

   b) **Third Party Support.** Customer may also elect, at its discretion, to obtain separate support by a third party for all or some of its licensed Software ("Administered License Units").

      i) Customer agrees that it will provide Chef the following information in connection with all Administered License Units for all periods that it is using a third party to support Administered License Units during the applicable License Term:

         1) Customer identification number/name with third party

         2) Number of Administered License Units for the prior month as of the 10th day of each following Month

      ii) The License Term for the Software is independent of any support term for Administered License Units that Customer may elect with a third party.

      iii) Failure by Customer to provide the information in this Section 2(b) will be a material breach of this Agreement.

3) **Third Party Software.** The Software includes components under license from third parties, including open source licenses (the "Third Party Components"). Third Party Components are subject to the terms of their accompanying open source licenses. Please see https://www.chef.io/3rd-party-licenses/ for more details. For avoidance of doubt, Chef’s warranty of the Software includes all Third Party Components to the extent embedded in, and used by, the Software.

4) **Restrictions.** The License is limited. Except as otherwise expressly permitted in this Agreement, Customer will not: (a) copy or use the Software in any manner except as expressly permitted in this Agreement; (b) use or deploy the Software in excess of the License Units for which Customer has paid the applicable License Fee; (c) transfer, sell, rent, lease, commercialize, lend, distribute, or sublicense the Software to any third party; (d) reverse engineer, disassemble, or decompile the Software (except to the extent such restrictions are prohibited by law); (e) alter or remove any proprietary notices in the Software; (f) make available to any third party the functionality of the Software or any license keys used in connection with the Software; or (g) use the Software for any purpose that is unlawful or prohibited by this Agreement or otherwise. If Customer does not comply with the License terms or the foregoing restrictions, Chef may terminate the applicable License in accordance with the contract Disputes Clause (Contract Disputes Act).

5) **Proprietary Rights.**

   a) **Software and Documentation.** Other than the License granted in Section 2, Chef and its licensors retain all right, title and interest in and to the Software and Documentation and all components thereof, including all patent, copyright, trademark, and trade secret rights, whether such rights are registered or unregistered, and wherever in the world those rights may exist and in any derivatives, modifications and enhancements thereto (collectively, the "Chef Rights"). Customer will not commit any act or omission or permit or induce any third party to commit any act or omission inconsistent with the Chef Rights. Chef or its licensors own all graphics, user and visual interfaces, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Software and its content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Software (collectively, the "Chef Marks"). This Agreement does not permit Customer to distribute any product or service using the Chef Marks, including in connection with any Third Party Components. Chef will retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Chef.

   b) **Proprietary Items.** Customer will have or obtain no rights in Chef Proprietary Items (or in any modifications or enhancements to them or any derivative work within the meaning of the US Copyright Act) except that, to the extent the Chef Proprietary Items are incorporated into a Deliverable, Chef will grant Customer a License in such Chef Proprietary Items to use them as part of (but not unbundled from) the Deliverable. All other Intellectual Property Rights in and to the Chef Proprietary Items will remain in and/or are hereby assigned to Chef.

6) **Fees and Payment Terms:**

   a) **License Fee.** An Order Form will state the specific License Fee and the number of License Units licensed to deploy or use the Software. License Fees are based on Software purchased, not actual usage (subject always to Section 15). The number of License Units purchased cannot be decreased during the relevant License Term. License Fees will be paid in accordance with any different billing frequency stated in the applicable Order Form.

   b) **Professional Services Fee.** For Professional Services fees designated as "fixed fee", Chef will invoice Customer upon execution of the applicable Order Form. For Professional Services not designated as fixed fee, Chef will invoice monthly in arrears based on actual hours worked during the preceding month. Unless the applicable Order Form provides otherwise, Professional Services Fees designated as “fixed fee.”
c) **Costs and Expenses.** Ordering Activity Licensee agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

d) **Payments.** Unless otherwise provided in an Order Form, all payments of fees or charges payable to Chef under this Agreement will be made in United States dollars and are due in full within thirty (30) days from the invoice receipt date. Customer will provide complete and accurate billing and contact information to Chef and will notify Chef of any changes to such information.

e) **Late payments.** Late payments (other than amounts disputed in good faith by Customer) will bear interest at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. All fees payable under this Agreement are net amounts and are payable in full.

f) **Taxes.** Chef shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7) **Delivery and Acceptance.**

a) **Acceptance.** Chef will make the Software available to Customer electronically. Software will be deemed to be delivered to Customer's billing address unless Customer provides written notice of an alternative delivery address. The Software will be deemed accepted immediately upon delivery. Acceptance (if any) of Deliverables will be specified in an Order Form.

8) **Term and Renewal; Termination.**

a) **Term of Agreement.** The term of this Agreement (the “Term”) will commence on the Effective Date and will continue until terminated as provided herein. Except as otherwise provided in Section 8(c) below, termination of this Agreement will not affect any outstanding Order Form, and this Agreement will remain in effect until all Professional Services and Deliverables to be provided thereunder have been completed and/or the applicable License Term has expired per the terms of such Order Form.

b) **Early Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Chef shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

c) **Effect of Termination.**

i) Upon termination of this Agreement, Customer will discontinue all representations that it is a Customer of Chef. Termination of the Agreement will not terminate an Order Form unless the basis for termination also prevents full performance under such Order Form and the non-breaching party includes notice of termination of such Order Form in its notice of termination of the Agreement.

ii) Upon termination of an Order Form, the following will apply in respect of that specific Order Form only:

1. the parties will cooperate to affect an orderly, efficient, effective and expeditious termination of the parties’ obligations under that Order Form;
2. Chef will have no obligation to perform any Services under the terminated Order Form after the effective date of the termination;
3. Customer will pay to Chef any fees, allowed reimbursable expenses, compensation or other amounts payable for Services performed under the terminated Order Form prior to the effective date of the termination;
4. all licenses granted by Chef thereunder will automatically cease as of the effective date of termination of such Order Form, and if Customer has no other applicable Software License, Customer must uninstall any installed Software, cease using all Software and destroy or return all copies of the Software to Chef; and certify in writing that all known copies thereof, including backup copies, have been destroyed or disabled in all forms and types of media as of the effective date of termination; and
5. upon Customer’s termination of an Order Form as provided in Section 8(b), Chef will, subject to Section 10 and Section 11 of this Agreement, pay to Customer the following:
   a) a pro rata portion of applicable License Fees following the effective date of termination through the expiration of the applicable License Term; and
   b) Professional Services fees designated as “fixed fee” that have not been performed as of the effective date of termination.

iii) Upon termination of this Agreement and completion, termination or expiration of all outstanding Order Forms, each party will promptly return to the other all of the other party’s Confidential Information within its possession or control and will certify in writing that it has complied with its obligations to return all such Confidential Information.

iv) The following shall survive termination of this Agreement for any reason: any and all liabilities accrued before the effective date of termination; and the provisions of this Agreement concerning proprietary rights, indemnity, disclaimers of warranty, limitation of liability, payment of fees and governing law.

9) **Professional Services.** Chef will perform the Professional Services detailed in any Order Form. Order Forms will set forth a description of the work to be performed, fees, time schedules and other special terms and conditions applicable to the particular project. Each Order
Form will become effective only upon acceptance by both parties hereto as evidenced by signature of an authorized representative of each party on the applicable Order Form. Chef will perform the Professional Services using its employees, subcontractors or agents, as Chef in its sole discretion deems appropriate. Chef will remain responsible to Customer for the actions of its employees, subcontractors or agents when so used.

a) **Customer Responsibilities.** Customer understands its business needs and has determined independently that the Deliverables and Professional Services will meet its needs.

b) **Intellectual Property Ownership.** Should the Professional Services set forth in an Order Form result in any reports, work product or other tangible items identified in an Order Form as a deliverable ("Deliverables"), unless otherwise provided in an Order Form, Chef grants to Customer a worldwide, non-exclusive, non-transferable, non sub-licensable license to use the Deliverables for Customer's internal use. Other than the limited license to the Deliverables contained herein or as otherwise set forth in an Order Form, Chef will own and retain all right, title and interest, express or implied, in and to any Deliverables created during the course of providing the Professional Services and to all other works of authorship of any kind or nature prepared, created or conceived by Chef in the performance of the Professional Services, exclusive of any Confidential Information of Customer incorporated therein. Chef will not own or have any right, title or interest in or to the Confidential Information of Customer, whether by assignment, license or otherwise.

c) **Residuals/Items of General Knowledge.** Chef may use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its professional services practice in the course of providing the Professional Services, including information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Chef. In no event will Chef be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables, provided this is done without use of Customer's Confidential Information.

10) **Warranty.**

a) **Software Warranty.** Chef warrants that the Software will perform in all material respects as specified in its accompanying Documentation under normal use for the duration of the Warranty Period. This warranty extends only to Customer. To the maximum extent permitted by applicable law, Customer’s exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software, and Chef, at its option, will replace it or refund any fee paid for the Software, provided that Customer gives Chef written notice of the noncompliance within the Warranty Period. Chef's sole obligation under the limited warranty set forth in this Section 10(a) is to use its reasonable efforts to correct or replace any non-conforming Software once Chef has been made aware of such non-conformance or, in Chef's sole discretion, to terminate this Agreement (in which event, Customer will immediately stop using the Software) and refund the License Fees paid by Customer to Chef up through the effective date of such termination.

b) **Services Warranty.** Chef warrants to Customer for a period of sixty 60 days after Customer acceptance of Services or Deliverables or initial receipt of or access to the Software, as applicable (the "Warranty Period") that: (i) the Services will be performed in a good and workmanlike manner; and (ii) the Deliverables will conform in all material respects to applicable specifications identified in an Order Form. Chef's sole obligation under the limited warranty set forth in this Section 10(b) is to use commercially reasonable efforts to correct any Services or Deliverables that do not comply with the warranties set forth in this Section 10(b) (e.g., by reperformance of any noncomplying Services or modifying any noncomplying Deliverables); provided that Customer gives Chef written notice of the noncompliance within the Warranty Period. If, after the expenditure of commercially reasonable efforts, Chef is unable to correct the noncompliance, Chef may choose to refund an equitable portion (e.g., based upon the value of Customer's actual use of, or any benefits received by Customer) of the fee paid by Customer for such Deliverables or Services, whereupon the same will be deleted from the Deliverables or Services and no longer considered a part thereof.

c) **Exclusions.** The warranties under Sections 10(b) and 10(a) do not apply to any noncompliance resulting from any: (i) use not in accordance with this Agreement or any applicable Order Form, including Customer operation or use of the Software or Deliverables other than in accordance with applicable documentation or design or on hardware not recommended, supplied or approved by Chef; (ii) modification, damage, misuse or other action of Customer or any third party; (iii) combination with any goods, services or other items provided by Customer or any third party; or (iv) combination of the Software with any distribution or binary not provided by Chef, even if the distribution or binary is derived from the same source code as the Chef Software. Further, Chef does not warrant that the Software or Deliverables or any other items furnished by Chef under this Agreement or any Order Form are free from non-material bugs, errors, defects or deficiencies.

d) **Disclaimer.** **EXCEPT FOR THE LIMITED WARRANTY IN SECTIONS 10(a) AND 10(b) ABOVE, THE SOFTWARE, DELIVERABLES, AND ANY SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED “AS IS”, WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, WARRANTIES CONCERNING THE USE, INTEROPERABILITY, OR PERFORMANCE OF THE SOFTWARE. CHEF DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. CHEF DOES NOT WARRANT THAT THE SOFTWARE, DELIVERABLES, OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.**

11) **Indemnification.**

a) **Indemnification by Chef.** Chef will indemnify Customer and will pay any costs or damages that may be finally awarded in respect of any third party claims, proceedings, costs or damages, including actual attorneys' fees and court costs and expenses in any such third party
action, proceeding or case, and agreed settlements to the extent that the Software or Deliverables infringe any United States patent, or any copyright, trademark or other proprietary right of such third party; provided that Customer: (i) promptly notifies Chef of the claim; (ii) gives Chef all necessary information regarding the claim; (iii) reasonably cooperates with Chef; and (iv) allows Chef to control the defense and all related settlement negotiations; provided that, if any settlement requires a non-monetary obligation of an indemnified party (other than ceasing use of the Software or Deliverables), then such settlement will require the Customer’s prior written consent, which consent will not be unreasonably withheld. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

b) Exclusions. Chef will have no liability for any infringement claim (a) based on modifications to the Software or Deliverables made by a party other than Chef or third party acting on behalf of Chef, if a claim would not have occurred but for such modifications, (b) based on the use of other than the then-current, unaltered version or release of the Software or Deliverables, unless the infringing portion is also in the then-current, unaltered version or release; (c) based on the use, operation or combination of the Software or Deliverables with non-Chef programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) attributable to any Third Party Components; (e) based on Customer's use of the Software or Deliverables other than in accordance with this Agreement or the applicable Documentation; or (f) based on combination of the Software with any distribution or binary not provided by Chef, even if the distribution or binary is derived from the same source code as the Chef Software.

d) Sole Remedy. THE TERMS OF THIS SECTION 11 CONSTITUTE THE ENTIRE LIABILITY OF CHEF, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INDEMNIFICATION CLAIMS OF ANY KIND.

e) Reserved.

12) Limitation of Liability.

a) Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED SPECIFICALLY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, DELIVERABLES, OR THE SERVICES PROVIDED BY CHEF HEREUNDER INCLUDING, WITHOUT LIMITATION, DAMAGES OR OTHER LOSSES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

b) Aggregate Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO CHEF UNDER THIS AGREEMENT.

c) General. THESE LIMITATIONS APPLY EVEN IF THIS SECTION 12 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, THE LIABILITY OF THE PARTIES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

da) Exclusion - Violations of Law. The limits in Section 12(a) and Section 12(b) above do not apply to damages incurred by a party due to the other party’s violation of applicable laws. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13) Confidentiality and Privacy. Customer and Chef will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party will protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event will use less than reasonable care. The terms of this Confidentiality section will survive termination of this Agreement. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information, save once copy for archival and dispute resolution purposes.

14) Data Protection. If the General Data Protection Regulation (“GDPR”) applies to Customer then the following terms will apply:
a) Definitions: In this Section 14, the following terms will have the following meanings:

i) “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

ii) “Controller”, “Processor”, “Data Subject”, “Personal Data”, “Processing” (and “Process”) and “Special Categories of Personal Data” will have the meanings given in Applicable Data Protection Law;

iii) “Applicable Data Protection Law” will mean: (i) prior to 25 May 2018, the EU Data Protection Directive (Directive 95/46/EC); and (ii) on and after 25 May 2018, the EU General Data Protection Regulation (Regulation 2016/679).

iv) “Standard Contractual Clauses” means the contractual clauses set out in Exhibit 1 to this Agreement.

b) Processing of Data:

i) Applicability. This Section 14 will apply only to the extent Customer is established within the EEA or Switzerland and/or to the extent Chef processes Personal Data of Data Subjects located in the European Economic Area (“EEA”) or Switzerland on behalf of Customer.

ii) Relationship of the parties: The Customer (the “Controller”) appoints Chef as a processor to Process the Personal Data that is the subject of the Agreement (the “Data”) for the purposes described in this Agreement and any Order Form (or as otherwise agreed in writing by the parties) (the “Permitted Purpose”). Chef will comply with the obligations that apply to it under Applicable Data Protection Law. The Ordering Activity is not bound by the GDPR.

iii) Prohibited data: The Customer will not disclose any Special Categories of Data to Chef for processing.

iv) Purpose Limitation: Chef will process the Data as a Processor as necessary to perform its obligations under this Agreement and any Order Form, and in accordance with the documented instructions of Customer (the “Permitted Purpose”), except where otherwise required by any EU (or any EU Member State) law applicable to Chef. The duration of the Processing, the nature and purpose of the Processing, the types of Data and categories of Data Subjects Processed under this Agreement are further specified in Appendix 1 to the Standard Contractual Clauses.

v) International transfers: Chef will not transfer the Data (nor permit the Data to be transferred) outside of the EEA unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorization in accordance with Applicable Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission. The following transfer mechanisms listed below will apply, in the following order of precedence, to any transfers of Data under this Agreement from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations; (1) EU-U.S. and Swiss-U.S. Privacy Shield Framework self-certifications (if applicable); (2) The Standard Contractual Clauses set forth in Exhibit 1 to this Agreement.

vi) Confidentiality of Processing: Chef will ensure that any person it authorizes to process the Data (an “Authorized Person”) will protect the Data in accordance with Chef's confidentiality obligations under this Agreement.

vii) Security: Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Chef will implement technical and organizational measures to protect the Data (1) from accidental or unlawful destruction, and (2) loss, alteration, unauthorized disclosure of, or access to the Data (a "Security Incident").

viii) Sub-Processing: The Customer consents to Chef engaging third party sub processors to process the Data for the Permitted Purpose provided that: (1) Chef maintains an up-to-date list of its sub processors; (2) Chef imposes data protection terms on any sub processor it appoints that require it to protect the Data to the standard required by Applicable Data Protection Law; and (3) Chef remains liable for any breach of this Clause that is caused by an act, error or omission of its sub processor. The Customer may object to Chef's appointment or replacement of a sub processor, provided such objection is based on reasonable grounds relating to data protection. In such event, Chef will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If Chef is unable to make available such change within a reasonable period of time, which will not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Chef without the use of the objected-to new Sub-processor by providing written notice to Chef. Chef will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

ix) Cooperation and Data Subjects’ Rights: Customer is not required to respond to any request from a Data Subject under any Applicable Data Protection Law unless required by a Federal
Law of the United States. Chef will provide reasonable and timely assistance to the Customer to enable the Customer to respond to: (1) any request from a Data Subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (2) any other correspondence, inquiry or complaint received from a Data Subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Chef, Chef will promptly inform the Customer providing full details of the same.

x) **Data Protection Impact Assessment:** If Chef believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, it will inform the Customer and provide reasonable cooperation to the Customer (at the Customer's expense) in connection with any data protection impact assessment that may be required under Applicable Data Protection Law.

xi) **Security Incidents:** If Chef becomes aware of a confirmed Security Incident (as defined in Section 14(b)(vii) above), it will inform the Customer without undue delay and will provide reasonable information and cooperation to the Customer so that the Customer can fulfill any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. Chef will further take such any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and will keep the Customer of all material developments in connection with the Security Incident.

xii) **Deletion or Return of Data:** Upon termination or expiration of the Agreement, Chef will (at the Customer's election) destroy or return to the Customer all Data in its possession or control. This requirement will not apply to the extent that Chef is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data Chef will securely isolate and protect from any further processing except to the extent required by such law.

xiii) **Audit:** The Customer acknowledges that Chef is regularly audited by independent third party auditors. Upon request, Chef will supply a summary copy of its audit report(s) to the Customer, which reports will be subject to the confidentiality provisions of this Agreement. Chef will also respond to any written audit questions submitted to it by the Customer, provided that the Customer will not exercise this right more than once per year.

15) **Software Usage Tracking.**

a) If and when Customer adds additional License Units to its License, Customer will pay to Chef for such additional License Units added to any License. Upon Chef's request (such request not to be made more than twice during any 12 month period without good cause), Customer agrees to promptly deliver to Chef (i) any usage files and reports generated by the Software to permit Chef to verify the number of License Units actually used by Customer during the applicable License Term; and/or (ii) a certification signed by one of Customer's officers regarding the number of License Units actually used by Customer during the applicable License Term. Notwithstanding the foregoing, Customer agrees to reasonably cooperate with Chef to verify the number of License Units actually used by Customer during the applicable License Term. If Chef confirms that Customer has exceeded the number of License Units for the applicable License Term, in addition to any other remedies available under this Agreement or applicable law, Customer agrees to pay the then-current License Fees in accordance with the GSA Schedule Pricelist for the additional License Units used by Customer. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

b) Unless Customer chooses to disable telemetry features in the Software, Customer consents to Chef receiving data and information directly from the Software for the sole purpose of providing information regarding Customer's use of the Software (i.e., when Customer installs an update or upgrade), as well as any Software bugs, errors, and other similar technical support issues. Chef will only use such data and information ("Software Usage and Technical Support Data") for its own business purposes, including but not limited to the purposes of (i) providing the Support Services; and (ii) to gather information about how Customer uses the Software, which may be combined with information about how others use the Software, in order to help Chef better understand trends and Customers' needs in order to better consider new features, and (iii) improving the Software and Customer's user experience. Chef will use Software Usage and Technical Support Data solely in aggregate, anonymized form and solely for Chef's own business purposes. For instructions on how to disable Chef's access to the Software Usage and Technical Support Data, please refer to the Software Documentation or contact Chef Support.

16) **Export Compliance.** As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer will be solely responsible for compliance with any such import, use, or export restrictions.

17) **FCPA, and No Unlawful Payments.** Neither the Customer nor any of its subsidiaries nor, to the Customer's knowledge, any other person associated with or acting on behalf of the Customer or any of its subsidiaries, including, without limitation, any director, officer, agent, employee or affiliate of the Customer or any of its subsidiaries ("Representatives") has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (c) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; (d) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977,
as amended, and the rules and regulations thereunder; or (e) Reserved. Further, Customer will, and will cause its Representatives to, comply with, as applicable the FCPA, including maintaining and complying with all policies and procedures to ensure compliance with these laws.

18) **Additional Obligations.** Each Party will comply with all applicable local, state, national, and international laws and regulations with respect to its rights and obligations under this Agreement. Customer further agrees that its purchase under this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Chef regarding future functionality or features of the Software.

19) **U.S. Government.** The Software is “Commercial Computer Software” as defined under FAR 52.227-14. For all other government entities, use, duplication, or disclosure of the Software and Documentation by the U.S. Government is subject to restrictions set forth in 52.227-14, as applicable.

20) **General.**

   a) Excusable delays shall be governed by FAR 52.212-4(f).

   b) Neither party may assign this Agreement except upon the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party’s voting securities or the assets governed by this Agreement in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party’s successors and permitted assigns.

   c) Customer consents to Chef’s use of the Customer name for marketing purposes to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

   d) If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

   e) The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. All waivers must be in writing and signed by both parties.

   f) All notices permitted or required under this Agreement will be in writing and will be delivered in person, by confirmed facsimile, overnight courier service or mailed by first class, registered or certified mail, postage prepaid. Such notice will be deemed to have been given upon receipt.

   g) This Agreement will be governed by the Federal laws of the U.S.A.

   h) The parties expressly agree that the UN Convention for the International Sale of Goods (CISG) or the Uniform Computer Information Transactions Act (UCITA) will not apply.

   i) Any amendment or modification to the Agreement must be in writing signed by both parties.

   j) In the event of a conflict between this Agreement and other applicable documents between the Parties, such documents will apply in the following descending order of precedence: (i) Order Form; (ii) this Agreement; (iii) other applicable agreements. In the event of a conflict between any terms of this Agreement or terms of an Order Form and the terms and conditions attached to or otherwise forming part of any Purchase Order issued by Customer (collectively, “Purchase Order Terms”), the terms of the negotiated Purchase Order will control or supersede the Agreement and/or Order Form. This Agreement supersedes the terms of any shrinkwrap or click-through license agreement included in any package or downloadable version of the Software.

   k) Each of the parties has caused this Agreement to be executed by its duly authorized representatives as of the Effective Date.

   l) Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

   m) The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent.

   n) This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
General Limitations.

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable purchase order for which Customer has paid the required license fees to an Approved Source. "Documentation" means written information (whether contained in user or technical manuals, training materials, specific internal design and structure of individual programs and associated interface information, except as otherwise expressly provided under the Agreement, Customer specifically agrees not to:

(i) transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any CirrusWorks relicensing/transfer policy then in force), or use the Software on CirrusWorks equipment not purchased by the Customer from an Approved Source or on secondhand CirrusWorks equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;

(ii) modify, adapt, or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;

(iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction or except to the extent that CirrusWorks is legally required to permit such specific activity pursuant to any applicable open source license;

(iv) publish any results of benchmark tests run on the Software;

(v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of CirrusWorks; or
To the extent required by applicable law, and at Customer's written request, CirrusWorks shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of CirrusWorks’ applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which CirrusWorks makes such information available.

Software, Upgrades and Additional Copies. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE TO AN APPROVED SOURCE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CIRRUSWORKS’ EQUIPMENT SUPPLIED BY AN APPROVED SOURCE FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

Proprietary Notices. Customer agrees to maintain and reproduce all copyright, proprietary, and other notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of CirrusWorks.

Term and Termination. The Agreement and the license granted herein shall remain effective until terminated. Customer may terminate the Agreement and the license at any time by destroying all copies of Software and any documentation provided with the Software.

Documentation. Customer's rights under the Agreement will terminate immediately without notice from CirrusWorks if Customer fails to comply with any provision of the Agreement. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer, all restrictions and limitations imposed on the Customer under the section titled “General Limitations” and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement.

Customer Records. Customer grants to CirrusWorks and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to CirrusWorks the appropriate license fees, plus the reasonable cost of conducting the audit.

Export, Re-Export, Transfer and Use Controls. The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by CirrusWorks under the Agreement are subject to export controls under the laws and regulations of the United States (“U.S.”) and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, import, transfer and use of CirrusWorks Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. CirrusWorks and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses.

Third Party Code. Certain portions of the Software may include software code which is subject to "open source" or "free software" licenses (“Third Party Code”). The Third Party Code is not subject to the terms and conditions of this Agreement, except for Sections regarding Disclaimers, Limitation of Liability. Instead, each item of Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for the Third Party Code, including any rights to copy, modify, or distribute Third Party Code under the applicable license. If CirrusWorks makes modifications to such Third Party Code and if the applicable license requires that such modifications be made available and CirrusWorks does not already publish such modifications via the applicable Third Party Code community, then CirrusWorks will make its modifications available.

Limited Warranty
Subject to the limitations and conditions set forth herein, CirrusWorks warrants that commencing from the date of shipment to Customer (but in case of resale by an Approved Source other than CirrusWorks, commencing not more than ninety (90) days after original shipment by CirrusWorks), and continuing for a period of the longer of (a) one year or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by CirrusWorks is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Software purchased from an Approved Source by a Customer who is the first registered end user. Customer's sole and exclusive remedy and the entire liability of CirrusWorks and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at CirrusWorks’ option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to the Approved Source supplying the Software to Customer, within the warranty period. CirrusWorks or the Approved Source supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does CirrusWorks warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for improving upon and attacking networks, CirrusWorks does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

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DISCLAIMER OF WARRANTY

EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CIRRUSWORKS, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO IN THE "LIMITED WARRANTY" SECTION ABOVE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY IN SUCH STATES. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

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Disclaimer of Liabilities-Waiver of Consequential Damages and Other Losses. IN NO EVENT WILL CIRRUSWORKS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF CIRRUSWORKS OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Customer acknowledges and agrees that CirrusWorks has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

Controlling Law, Jurisdiction. The Agreement and warranties ("Warranties") are controlled by and construed under the laws of the State of Virginia, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of Virginia shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties.

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ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
CIRRUSWORKS SOFTWARE

CIRRUSWORKS SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

FOR PURPOSES OF THE AGREEMENT, "SOFTWARE" SHALL MEAN COMPUTER PROGRAMS, INCLUDING Firmware AND COMPUTER PROGRAMS EMBEDDED IN CIRRUSWORKS EQUIPMENT, AS PROVIDED TO ORDERING ACTIVITY BY AN APPROVED SOURCE, AND ANY UPGRADES, UPDATES, BUG FIXES OR MODIFIED VERSIONS THERETO (COLLECTIVELY, "UPGRADES"), ANY OF THE SAME WHICH HAS BEEN RELICENSED UNDER THE CIRRUSWORKS SOFTWARE TRANSFER AND RE-LICENSING POLICY OR BACKUP COPIES OF ANY OF THE FOREGOING.

License. Conditioned upon compliance with the terms and conditions of the Agreement and the applicable ordering document, CirrusWorks grants to Ordering Activity a nonexclusive and nontransferable license to use for Ordering Activity's internal business purposes the Software and the Documentation for which Ordering Activity has paid the required license fees to an Approved Source. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by an Approved Source with the Software in any manner. In order to use the Software, Ordering Activity may be required to input a registration number or product authorization key and register Ordering Activity's copy of the Software online at CirrusWorks' website to obtain the necessary license key or license file. Ordering Activity's license to use the Software shall be limited to, and Ordering Activity shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable applicable ordering document which has been accepted by an Approved Source.

Unless otherwise expressly provided in the Documentation or ordering document, Ordering Activity shall use the Software solely as embedded in, for execution on, or for communication with CirrusWorks equipment owned or leased by Ordering Activity and used for Ordering Activity's internal business purposes. No other licenses are granted by implication, estoppel or otherwise.

General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and CirrusWorks retains ownership of all copies of the Software and Documentation. Ordering Activity acknowledges that the Software and Documentation contain trade secrets of CirrusWorks or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under the Agreement, Ordering Activity shall only use the Software in connection with the use of CirrusWorks equipment purchased by the Ordering Activity from an Approved Source and Ordering Activity shall have no right, and Ordering Activity specifically agrees not to:

(i) transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any CirrusWorks relicensing/transfer policy then in force), or use the Software on CirrusWorks equipment not purchased by the Ordering Activity from an Approved Source or on secondhand CirrusWorks equipment, and Ordering Activity acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
(ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
(iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction or except to the extent that CirrusWorks is legally required to permit such specific activity pursuant to any applicable open source license;
(iv) publish any results of benchmark tests run on the Software;
(v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of CirrusWorks;
(vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of CirrusWorks. Ordering Activity shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Ordering Activity's written request, CirrusWorks shall provide Ordering Activity with the interface information needed to achieve interoperability between the Software and another independently created program. Ordering Activity shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which CirrusWorks makes such information available.

Software, Upgrades and Additional Copies. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) ORDERING ACTIVITY HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS ORDERING ACTIVITY, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE TO AN APPROVED SOURCE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CIRRUSWORKS' EQUIPMENT SUPPLIED BY AN APPROVED SOURCE FOR WHICH ORDERING ACTIVITY IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

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Ordering Activity Records. In accordance with applicable security requirements, Ordering Activity grants to CirrusWorks and its independent accountants the right to examine Ordering Activity's books, records and accounts during Ordering Activity's normal business hours to verify compliance with this Agreement.
Export, Re-Export, Transfer and Use Controls. The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by CirrusWorks under the Agreement are subject to export controls under the laws and regulations of the United States ("U.S.") and any other applicable countries' laws and regulations. Ordering Activity shall comply with such laws and regulations governing export, re-export, import, transfer and use of CirrusWorks Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. CirrusWorks and Ordering Activity each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses.

Third Party Code. Certain portions of the Software may include software code which is subject to “open source” or “free software” licenses ("Third Party Code"). The Third Party Code is not subject to the terms and conditions of this Agreement. Instead, each item of Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this Agreement limits Ordering Activity's rights under, or grants Ordering Activity rights that supersede, the terms and conditions of any applicable license for the Third Party Code, including any rights to copy, modify, or distribute Third Party Code under the applicable license. If CirrusWorks makes modifications to such Third Party Code and if the applicable license requires that such modifications be made available and CirrusWorks does not already publish such modifications via the applicable Third Party Code community, then CirrusWorks will make its modifications available.

Limited Warranty
Subject to the limitations and conditions set forth herein, CirrusWorks warrants that commencing from the date of shipment to Ordering Activity (but in case of resale by an Approved Source other than CirrusWorks, commencing not more than ninety (90) days after original shipment by CirrusWorks), and continuing for a period of the longer of (a) one year or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Software purchased from an Approved Source by a Ordering Activity who is the first registered end user. Ordering Activity’s remedy and the liability of CirrusWorks and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at CirrusWorks’ option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to the Approved Source supplying the Software to Ordering Activity, within the warranty period. CirrusWorks or the Approved Source supplying the Software to Ordering Activity may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does CirrusWorks warrant that the Software is error free or that Ordering Activity will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, CirrusWorks does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

Restrictions. This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by CirrusWorks or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by CirrusWorks, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; and (f) Software supplied by any third party which is not an Approved Source.

DISCLAIMER OF WARRANTY
EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CIRRUSWORKS, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO IN THE "LIMITED WARRANTY" SECTION ABOVE. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

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EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Cisco Systems, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
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Cisco Supplemental EULAs (SEULAs) as provided on September 24, 2013

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<td>Cisco Unified Communications Manager 8.X NFR Kit</td>
<td>DOC-16947</td>
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<td>35 Collaboration</td>
<td>Cisco Unified Video Conferencing</td>
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<td>37 Routers</td>
<td>CSR 1000V</td>
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<td>39 Security</td>
<td>Cisco AnyConnect Secure Mobility Client</td>
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<td>46 Security</td>
<td>Cisco ASA 5585-X CX-10 Web Security Essentials</td>
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<td>50 Security</td>
<td>Cisco ISE Wireless</td>
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<td>51 Security</td>
<td>Cisco ISE Wireless Upgrade</td>
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<td>52 Security</td>
<td>Cisco ISE Advance</td>
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<td>53 Security</td>
<td>Cisco ISE Migration</td>
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<td>54 Security</td>
<td>Cisco ISE All-in-One</td>
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<td>56 Security</td>
<td>(formerly Cisco IronPort Email and Web Security Appliances and Security Management Application) Cisco ASA Next Generation Firewall Services</td>
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<td>Cisco TelePresence Commercial Express</td>
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<td>69 Video</td>
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<td>Cisco WebEx Meeting Server</td>
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<td>77 WebEx</td>
<td>Cisco WebEx Social</td>
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<td>77 WebEx</td>
<td>Cisco WebEx Meeting Server</td>
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SUPPLEMENTAL END USER LICENSE AGREEMENT

THIS SUPPLEMENTAL END USER LICENSE AGREEMENT (THIS “AGREEMENT”) SUPPLEMENTS AND AMENDS THE TERMS OF THE CISCO SYSTEMS, INC. ("CISCO") END USER LICENSE AGREEMENT AVAILABLE AT THE FOLLOWING WEB ADDRESS: http://www.cisco.com/go/eula (THE "EULA"). THIS AGREEMENT FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND MERAKI LLC AND ITS AFFILIATES, INCLUDING CISCO, IT’S PARENT COMPANY (“MERAKI”) AND GOVERNS YOUR ACQUISITION AND USE OF MERAKI PRODUCTS. PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS THE TERMS UNDER WHICH YOU MAY USE OUR FREE WEB AND MOBILE APPS, PURCHASE HARDWARE FROM US OR OUR AUTHORIZED RESELLERS, AND PURCHASE A LICENSE TO USE OUR PROPRIETARY WEB-BASED HOSTED SOFTWARE PLATFORM THAT INTERACTS WITH OUR HARDWARE. YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT AND TO USE OUR PRODUCTS IN COMPLIANCE WITH THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE DO NOT USE OUR PRODUCTS.

The terms “Customer,” “you,” “your,” and “yours” refer to you, the end GSA customer, the authorized entity permitted to use the Products, whether obtained directly from Meraki or through one of our authorized resellers. The terms “Meraki” "we," "us," and "our" refer to Meraki, LLC, a Delaware limited liability company with offices at 500 Terry Francois Street, San Francisco, California, 94158. For any material modifications to this Agreement, such modifications will be effective if they are stated in a writing, signed by both parties.

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following terms have the corresponding definitions listed below.

‘Agent Software’ means Meraki’s downloadable software client that is installed on a computer or mobile device as part of the Systems Manager application.

‘Apps License’ has the meaning given to it in Section 3.2, below.

‘Customer Content’ means content prepared by you for use with the Products, whether or not provided to Meraki, including logos, splash pages, network configurations, and preferences.

‘Device Management Functionality’ means the actions that may be performed by Customer or by Meraki on a mobile device or other device (e.g., a laptop computer) managed by our Systems Manager product, including: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots (on computers only); (iv) set and enforce policies; and (v) install and remove apps (on mobile devices only).

‘Documentation’ means any user instructions, manuals, Specifications, or other documentation provided by Meraki, at http://meraki.cisco.com that relates to the use of the Products, including any Modifications.

‘Distributor’ has the meaning given to it in Section 3.7, below

‘End Users’ means those persons who obtain access to your Network.

‘Feedback’ has the meaning given to it in Section 5.1, below.

‘Firmware’ means our proprietary software embedded in or otherwise running on the Hardware.

‘Firmware License’ has the meaning given to it in Section 3.1, below.

‘Governing Documents’ has the meaning given to it in Section 8.1, below.

‘Hardware’ means the Meraki hardware products listed on an Order.

‘Hosted Software’ means our proprietary, web-based software platform, including the interface known as the “Dashboard” and any Agent Software, but specifically excluding the Web Apps.

‘Hosted Software License’ has the meaning given to it in Section 3.1, below.

‘Intellectual Property Rights’ means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, trademarks, service marks, trade name and logo rights, and similar rights, (b) trade secrets and other rights in inventions, know-how and confidential or proprietary information, (d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, provisions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

‘Licenses’ means, collectively, the Firmware License, the Hosted Software License, and the Apps License.

‘Mobile Apps’ means the Agent Software for mobile devices.

‘Modification’ or “Modifications” means all changes incorporated into or used with the Software or Documentation, including enhancements, standard releases, and patches.

‘Network’ means your local area network, created in whole or in part by use of our Products.

‘Order’ means a purchase order submitted by you either directly to Meraki or to one of our authorized resellers with respect to the purchase of the hardware products, software products, and related licenses listed on such Order.

‘Products’ means, collectively, the Hardware, the Software, the Documentation, and the Support Services.

‘Purchase Price’ means the aggregate price you paid for the Products listed on the applicable Order.

‘RMA’ has the meaning given to it in Section 7.2, below.

‘Service Level Agreement’ means the Service Level Agreement included as Attachment 1, which governs the terms of the Service Level Warranty.

‘Service Level Warranty’ has the meaning given to it in Section 7.1, below.

‘Software’ means, collectively, the Firmware, the Hosted Software, and the Web Apps.

‘Specifications’ has the meaning given to it in Section 4.1, below.

‘Systems Manager’ means the Web App currently known as Systems Manager.

‘Systems Manager Data’ means the data collected through the Device Management Functionality and otherwise through Systems Manager.

‘Support Services’ means the customer support services described below in Attachment 2.

‘Term’ means the term of the Hosted Software License(s) indicated on the Order or as subsequently modified in connection with the purchase of additional Hosted Software Licenses so that the Term with respect to all such licenses expires at the same time in accordance with the provisions of Section 6.1, below.
“Traffic Information” means, collectively, information about devices that connect to the Network, such as MAC address, device type, operating system, geolocation information, and information transmitted by devices when attempting to access or download data or content (e.g., hostnames, protocols, port numbers, and IP addresses) via the Network.

“Warranty Period” means, with respect to any item of Hardware, the greater of one year or the warranty period set forth in the applicable Specifications, commencing, in either case, on the date the applicable Hardware is shipped to Customer in fulfillment of the Order.

“Web Apps” means the web-based applications (available to you at http://meraki.cisco.com) currently known as “Mapper,” “Stumbler,” and “Systems Manager.”

ARTICLE 2 SERVICES

2.1. Meraki Responsibilities. If you have purchased a Hosted Software License, we will provide you with access to the Hosted Software commencing as of the date your Order ships through the expiration of the Term, subject to the terms of this Agreement.

2.2. Customer Responsibilities. You are responsible for your use of the Products in full compliance with this Agreement and for all activities engaged in by you and your End Users while using your Network, including without limitation: (i) promptly updating the registration information of the primary account holder for the Hosted Software if it changes or is no longer current, accurate and complete; (ii) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Software, and notifying Meraki promptly of such unauthorized access or use; (iii) being responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all activities of your End Users and providing any support services your End Users may need; (iv) obtaining and maintaining all Hardware and other communications equipment needed to access the Hosted Software or Web Apps and for paying all required third-party access charges; (v) being responsible for, and assuming the risk of, any problems resulting from the content, completeness, accuracy, and consistency of all Customer Content; and (vi) complying with all applicable local, state, federal, and foreign laws in using the Hosted Software, or Web Apps.

ARTICLE 3 LICENSES

3.1. Firmware License and Hosted Software License. Subject to the terms and conditions of this Agreement, Meraki grants you a non-sub licensable, non-transferable (except as otherwise provided herein) and non-exclusive license, for the duration of the Term, to (i) use the Firmware only for internal purposes, in object code form, as embedded in, or for execution on, the Hardware (the “Firmware License”), and (ii) access the Hosted Software via a web browser and use the Hosted Software solely for internal business purposes (the “Hosted Software License”).

3.2. Apps License. If you access any of the Web Apps, including the download and/or installation of any related Agent Software, or download any Mobile App, then, subject to the terms and conditions of this Agreement, Meraki grants you an individual, personal, non-sub licensable, non-exclusive, and non-transferable (except as otherwise provided herein) license to use the Web Apps or Mobile App, as applicable, for your personal or internal business purposes (the “Apps License”).

3.3. Reserved.

3.4. Modifications. If, during the Term, Meraki integrates any Modifications into the Firmware, Hosted Software, or Web Apps, each such Modification and all related Documentation, will be deemed to be part of the Firmware, Hosted Software, or Web Apps, and made available to the Government only under the terms of the applicable Firmware License, Hosted Software License, or Apps License.

3.5. License to Customer Content. You hereby grant us a non-sub licensable and non-exclusive license to reproduce, distribute, or use any Customer Content for the duration of the License(s) applicable to the Products you are using in connection with our delivery of the Products and services contemplated by this Agreement. You understand and agree that Meraki may use and disclose, in an aggregated format only, any and all data that is derived or collected from your use of the Products for the purpose of generally improving the Products and to otherwise operate, manage, maintain, improve, or promote Meraki’s products and services, provided that such aggregated data would not reasonably be identifiable as originating with or associated with you or any End User.

3.6. Restrictions. In exchange for the grant of the applicable license or licenses set forth above, you agree you will not, and will not permit others to, whether directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) use or attempt to use the Firmware on third party hardware components; or (v) remove any proprietary notices or labels on the Software.

3.7. Special Terms Regarding Apple. Mobile Apps may be distributed by Meraki via a third party (“Distributor”), including Apple, Inc. You acknowledge that this Agreement is entered into solely between you and Meraki. This Agreement is not intended to provide for usage rules for Mobile Apps that are less restrictive than the Usage Rules set forth for Licensed Applications in, or that otherwise conflict with, the App Store Terms of Service as of the date that you accept the App Store Terms of Service (which you acknowledge you have had the opportunity to review).

ARTICLE 4 HARDWARE

4.1. Use. The specifications for any Hardware you have purchased are set forth on the relevant Meraki data sheets (which can be found on http://meraki.cisco.com) (the “Specifications”). You will use the Hardware only in accordance with the Specifications and subject to the terms of this Agreement, including this ARTICLE 4.

4.2. Restrictions. You will not, and will not permit others to, whether directly or indirectly: (i) disassemble or attempt to reverse engineer the Hardware; (ii) remove or erase the Firmware from the Hardware, or otherwise try to disable or alter the Firmware functionality; (iii) load any other software onto the Hardware; (iv) make any alterations, updates, enhancements, additions or improvements to the Hardware without the prior written approval of Meraki; or (v) remove any logo, trademark, or service mark of Meraki from any item of Hardware. Any alterations, updates, enhancements, additions, or improvements so approved will be the sole property of Meraki. If any alterations, updates, enhancements, additions or improvements interfere with the normal operation, maintenance, or support of the Hardware (including by increasing the cost of maintenance or support or creating a safety hazard), you will promptly remove the same and restore the Hardware to its normal condition.

ARTICLE 5 OWNERSHIP

5.1. Meraki Property. Except as provided in Section 5.2, below, as between you and Meraki, Meraki owns (i) all right, title, and interest, including all Intellectual Property Rights therein, in and to the Software and Documentation, and (ii) all Intellectual Property Rights in the Hardware. Nothing in this Agreement will be construed as transferring or changing our Intellectual Property Rights or interests in the Products in any respect. In addition, we will own any and all right, title, and interest in and to any feedback, suggestions, information, or materials you convey to us will be controlled by applicable provisions of the Copyright Act, 17 U.S.C. § 103 and the FAR clause at 52.227-14 related to the Products in connection with your use of the Products (“Feedback”). You hereby assign to Meraki all right, title, and interest in such Feedback and will execute any documents and take any additional actions Meraki deems necessary to evidence, record, or perfect the foregoing assignment.
5.2. Customer Property. Except as provided in Section 3.5, above, as between you and Meraki, you own the Customer Content and all Intellectual Property Rights therein. Nothing in this Agreement will be construed as transferring or changing your ownership rights or interests in the Customer Content in any respect.

5.3. Reservation of Rights. Other than the rights expressly granted to you in this Agreement, we reserve all rights with respect to the Products and any and all related rights, including any derivative works and any media, mode, or method of distribution or transmission of the Products, whether available now or to be developed in the future.

5.4. Privacy and Data Collection. Our Privacy Policy hereby incorporated into this Agreement as Attachment 3. Please read the Privacy Policy carefully for information relating to our collection, use, and disclosure of personal information. We collect Traffic Information and may from time to time make available functionality that allows the Government to limit or restrict the types of Traffic Information we collect. Additionally, for devices with Agent Software installed, we transmit certain geolocation information about those devices and the networks on which they are running to Google Inc. ("Google"), which provides us with related geolocation information that we store and make available to network administrators as described in our Privacy Policy. Google's Privacy Policy, and not Meraki's, governs Google's handling of the information that we provide to Google. We use Traffic Information and any related information only to you regarding, and to allow you to exercise certain controls with respect to, the traffic on your Network. We use Systems Manager Data to provide support and conduct product development activities. You represent and warrant to us that you have obtained or will obtain valid consent from each End User to add that End User's device to the Network, to permit you and Meraki to collect, use, and disclose Traffic Information as described in this Section 5.4, and, to the extent you use Systems Manager, to use Systems Manager as described above (including, without limitation, accessing and deleting files on devices) and to permit you and Meraki to collect, use, and disclose Systems Manager Data as described in this Section 5.4. You hereby consent to our collection, use, and disclosure of Traffic Information and, to the extent you use Systems Manager, to our use of the Device Management Functionality and its collection, use, and disclosure of Systems Manager Data, in each case as described in this Section 5.4.

5.5. Publicity. Neither we, nor you, will use the other's name, trademark, or trade name without the prior written consent of the other party.

ARTICLE 6 TERM AND TERMINATION

6.1. Term. This Agreement will be effective with respect to your use of the Products until the expiration of the License(s) applicable to the Products you purchase, unless earlier terminated under the FAR. To the extent that you purchase additional Hosted Software License(s) subsequent to the date of the first Order, the duration of each Hosted Software License you have purchased will be adjusted such that all of your Hosted Software Licenses will expire on the same date.

The new co-termination date is calculated as a function of (i) the remaining time on your existing Hosted Software License(s) at the time of purchase, (ii) the duration of the Hosted Software License(s) purchased, and (iii) the one-year list price of each such Hosted Software License. This function produces a time value attributable to each Hosted Software License purchased, that, when added together with the time value attributable to all new Hosted Software Licenses in a given purchase, yields what we call the "Incremental Dollar Days" associated with the new purchase. In addition, based on the one-year list price of all Hosted Software Licenses in your Network and the number of each type of Hosted Software License purchased, we determine the amount of Hosted Software License value that your Network consumes each day, what we call the "Daily License Usage Rate." By dividing the Incremental Dollar Days by the Daily License Usage Rate, and adding the resulting number of days to the remaining time on your existing Hosted Software Licenses, we arrive at the adjusted co-termination date following any new purchase. For further information regarding our licensing and co-termination policies please visit http://meraki.cisco.com/support/#policies/licensing.

6.2. Termination. Termination may only be effected by the procedures set forth in the FAR.

6.3. Effect of Termination. Upon the termination of this Agreement for any reason, your access to and right to use the Products will terminate, and all Licenses will terminate. Upon expiration of a Hosted Software License, your Apps License will survive and you may continue to access and use the Web Apps and Mobile Apps, subject to the terms and conditions of this Agreement. Upon termination of this Agreement, each party will return (or destroy) any Confidential Information of the other party in its possession. The following provisions of this Agreement will survive any termination of the Agreement: Sections 5.1, 5.2, 5.3, 5.4, and 6.3, and ARTICLE 8.

ARTICLE 7 MERAKI WARRANTIES

7.1. Service Warranties. Meraki will make reasonable efforts to provide the Hosted Software and Web Apps available in accordance with the service level warranty set forth in the Service Level Agreement included as Attachment 1 (the “Service Level Warranty”). . The remedy set forth in the Service Level Agreement is your sole and exclusive remedy with respect to the subject matter of the Service Level Agreement, and our sole and exclusive liability, in contract, tort, or otherwise, for any breach of the Service Level Warranty.

7.2. Hardware Warranties. We represent and warrant to you, the entity who obtained the Hardware from Meraki or its authorized reseller, but not to any End User or third parties, as follows: (i) for the Warranty Period, the Hardware will be free from material defects in materials and workmanship; (ii) all items of Hardware are new or refurbished unless otherwise indicated on the face of the Order; and (iii) we have good title to the Hardware, free and clear of any liens, claims, or encumbrances. Hardware not meeting the warranties set forth above will be, at our option, (a) repaired, (b) replaced, or (c) Meraki will refund to you the depreciated amount of the Purchase Price allocable to the defective Hardware, calculated on a straight-line, five-year basis. All Hardware repaired or replaced under warranty will be warranted for the remainder of the Warranty Period. For any return permitted under Meraki’s return policy as provided in Attachment 4, you will request a Return Materials Authorization (“RMA”) number in writing with the reasons for the return request. The remedies described above are our sole liability and your sole remedy for any breach of the warranties contained in this Section 7.2. Meraki is not responsible for any Customer Content or any other non-Meraki data or information stored on any Hardware returned to Meraki for repair, whether under warranty or not.

ARTICLE 8 MISCELLANEOUS

8.1. Integration. This Agreement, the EULA, the Order, and the Service Level Agreement (collectively, the “Governing Documents”) constitute the entire agreement between Meraki and Customer with respect to the subject matter of the Governing Documents and supersedes all prior agreements, understandings, and arrangements, oral or written, between Meraki and Customer. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter of the Governing Documents have been made either by Meraki or Customer which is not expressly set forth in the Governing Documents. If there is a conflict between the terms of this Agreement and the EULA, the terms of this Agreement will apply.

8.2. Force Majeure. Neither you nor Meraki will be liable under this Agreement by reason of any failure or delay in the performance of its obligations on account of strikes (other than strikes of a party’s own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions (other than with respect to a party’s own employees), earthquakes, material shortages or any other causes that are beyond the reasonable control of such party so long as the parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

8.3. Reserved.

8.4. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, then such portion will be deemed to be of no force or effect, and this Agreement will be construed as if such portion had not been included herein.
8.5. Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, in accordance with the provisions of the Anti-Assignment Act, 41 U.S.C.§ 6305, and approval procedures set forth at FAR42.1204. Any attempted assignment in violation of this Section 8.5 will be void and without effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by the GSA Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE: Cisco Network Active Abstraction

Additional Licensing Instructions:
Client Licensing: To activate additional users for the licenses purchased please contact your Cisco Account Manager or Sales Representative or send email to ask-ana-licensing@cisco.com with the requested information below:
1. GSA Customer Purchase Order
2. Your Contact Information
3. Your Cisco Sales Representative Name

NOTE: This alias is used only for license activation. For any questions or support issues, contact your Cisco Account Manager or representative.

Installation and Use
This license strictly prohibits Customer and any user from utilizing this Software for more than a single Customer network management environment. Reproduction and Distribution Customer may not reproduce nor distribute software

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS
Please refer to the attached Cisco Systems, Inc. End User License Agreement
Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agrees to comply at all times with the terms and conditions provided in this SEULA. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

If you have licensed Cisco Workplace Portal, the following additional terms apply:
Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for employees, agents, consultants and/or independent contractors of the Government.
Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you licensed Cisco Cloud Portal, the following additional terms apply:
Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.
Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the licensee. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.
CPO elements included in Cisco Service Connector can only be used with the licensed components listed below: Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.
Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.
Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.
Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.
Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters are restricted to use with Cisco Cloud Portal.
IMPORTANT: READ CAREFULLY
Dear Customer,
This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

1. ADDITIONAL LICENSE RESTRICTIONS
   Software Upgrades, Major and Minor Releases
   Cisco may provide Cisco Configuration Engine software updates. The software update and new version releases can be purchased through Cisco or a recognized partner or reseller. The customer should purchase one software update for each Configuration Engine installation. If the customer is eligible to receive the software update or new version release through a Cisco extended service program, the customer should request to receive only one software update or new version release per valid service contract. Reproduction and Distribution. Customer may not reproduce nor distribute software.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS
   Please refer to the attached Cisco Systems, Inc. End User License Agreement.
Important: Read Carefully

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

If you do not agree to all of the terms of the Agreement, then Cisco is unwilling to license the software to you and (A) You may not download, install or use the software, and (B) You may return the software (including any unopened CD package and any written materials) for a full refund, or, if the software and written materials are supplied as part of another product, the government may return the entire product for a full refund. Your right to return and refund expires 30 days after purchase from Cisco or an authorized Cisco reseller, and applies only if you are the original end user purchaser.

Important: Read Carefully

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This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

If you do not agree to all of the terms of the Agreement, then Cisco is unwilling to license the software to you and (A) You may not download, install or use the software, and (B) You may return the software (including any unopened CD package and any written materials) for a full refund, or, if the software and written materials are supplied as part of another product, the government may return the entire product for a full refund. Your right to return and refund expires 30 days after purchase from Cisco or an authorized Cisco reseller, and applies only if you are the original end user purchaser.

Product Name
L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license
L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license
R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license
R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

Connected Grid Network Management System (CG NMS) License
This license entitles the user to specific Cisco CG NMS product features for specific time duration. The specific Cisco CG NMS product features and the time duration are detailed as follows:
L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license
L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license
R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license
R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

The user is entitled to receive updates as made available during the term of the license, provided that the user holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting CG NMS products.
IMPORTANT: READ CAREFULLY

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS:

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

- Tidal Enterprise Scheduler
- Cisco Process Orchestrator
- Tidal Performance Analyzer
- Cisco Intelligent Automation for Compute
- Cisco Intelligent Automation for Cloud
- Cisco Intelligent Automation For Cloud Starter Edition
- Cisco Server Provisioner
- Cisco Intelligent Automation for SAP Definitions

For purposes of this Supplement, the following defined terms will apply:

Designated System shall mean the designated platform for which Customer originally licenses the Software from Cisco for installation and use. Such designated platform may include for instance, but is not limited to, a designation of the specific number of CPUs or system description or name as approved by Cisco. Movement and Usage Fees shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System. Total Deployment Size shall mean the designated configuration for which The Cisco Intelligent Automation For Cloud Starter Edition Solution's total deployment size cannot exceed 160 blades collectively across a customer's installation. Other Terms and Conditions, Movement and Usage. With respect to the license granted to Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing prior written notice to obtain updated keys, and additional fees may apply. A fee schedule is available upon Customer's written request to Cisco. License. For the avoidance of doubt, the license granted to Customer for the Software in the license section shall be perpetual if designated as such by Cisco at time of Order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above. Total Deployment Size. For avoidance of doubt, no customer shall deploy the Cisco Intelligent Automation for Cloud Starter Edition Solution in a configuration that exceeds 160 blades in total deployment size across the enterprise.
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by the Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS SOFTWARE IMPORTANT READ CAREFULLY: This Supplemental End User License Agreement (SEULA) contains additional terms and conditions for the Software licensed under the End User License Agreement (EULA) between the Government and Cisco (collectively, the Agreement). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MUST RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

ADDITIONAL LICENSE RESTRICTIONS
Device Restricted Versions: The Customer may install and run the Software on a single server to manage up to the cumulative device limit. If a large number of devices or to meet certain performance criteria, one additional copy of Cisco Prime LMS may be installed on a secondary server. The cumulative total number of devices supported cannot exceed 5,000 per serial license key. Device support beyond 5,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

Installation and Use
The Software components are provided to Customer solely to install, update, supplement, or replace existing functionality of the applicable Network Management Software product. Some license terms, such as device count and proof of preexisting licenses may be electronically enforced. Customer may install and use the following Software components: Cisco Prime LAN Management Solution (Cisco Prime LMS): May be installed on one (1) server in Customer's network environment. Installing the Software and applying a single serial license key to two (2) servers are supported in the 5,000 and 10,000 device restricted versions, but the cumulative total number of devices supported cannot exceed 5,000 and 10,000 respectively per serial license key. When two servers are used to host Cisco Prime LMS, each server should have a copy of the original license key installed on it. Customers should not modify the license file.

Additional Information for 5,000 Device Restricted Version for LMS 4.2
Users of Cisco Prime LMS 4.2 with 5,000 device restricted licensing may require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided the customer has purchased and registered the 5,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 5,000 per serial license key. Device support beyond 5,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

Additional Information for 10,000 Device Restricted Version for LMS 4.2
Users of Cisco Prime LMS 4.2 with 10,000 device restricted licensing often require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided the customer has purchased and registered the 10,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 10,000 per serial license key. Device support beyond 10,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.
Additional Information for RHEL
RHEL distribution that comes along with Cisco Prime LMS 4.2 is solely intended for use by Cisco Prime LMS application alone and customers may not use this for other purposes.

Reproduction and Distribution
Customer may not reproduce nor distribute software except to make copies to authorized employees, agents, and contractors for backup purposes only.

DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS
Please refer to the attached Cisco Systems, Inc. Software License Agreement
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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SUPPLEMENTAL LICENSE AGREEMENT
SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE:

CISCO PRIME CENTRAL

IMPORTANT-READ CAREFULLY: This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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Cisco Prime Central requires a license to connect to and/or interoperate with other Cisco and third party systems or components, and is further subject to the limitations set forth below. Please see the Additional Information section of this document for any licenses which are included with your specific product purchase. If your requirements exceed the scope of any license expressly included with your product, you must purchase additional licenses from Cisco pursuant to a newly executed GSA Customer Purchase Order.

The following restrictions apply:
- Cisco Prime Central Tier 1 and Tier 2 Gateway may not be used to connect Cisco Prime Central to third party systems, such as third party trouble ticketing systems, except as expressly set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central Tier 1 and Tier 3 Data Service Adapter instances may only be used to connect to other Cisco applications or components embedded within Cisco applications, and in addition, only if expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with an OSS system(s) using MTOSI interface except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with Cisco Domain Manager(s) except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.

Rights Included for Cisco Prime Central MTOSI License
Cisco Prime Central MTOSI license includes the right to use one (1) MTOSI instance to integrate Cisco Prime Central to an OSS system using the MTOSI interface.
Reproduction and Distribution
Customer may not reproduce nor distribute software. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS Please refer to the Cisco Systems, Inc. Software License Agreement.
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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If you have licensed Cisco Workplace Portal, the following additional terms apply:
Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for the end users, employees, agents, consultants and/or independent contractors.

CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you have licensed Cisco Cloud Portal, the following additional terms apply:

Cisco Cloud Portal is licensed for use with cloud computing and orchestration infrastructure maintained and managed by the customer. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with licensed components listed below:

- Cisco Service Connector Terminal Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.
- Cisco Service Connector VMware Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.
- Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.
- Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters restricted to use with Cisco Cloud Portal.
**Cloud and Systems Management**

**Cisco Tidal Intelligent Automation**

**DOC-31651**

**IMPORTANT: READ CAREFULLY**

**Dear Customer,**

**Supplemental End User License Agreement**

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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**END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS IMPORTANT: READ CAREFULLY**

**Software**

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

- Tidal Enterprise Scheduler
- Tidal Horizon
- Tidal Intelligent Automation
- Tidal Enterprise Orchestrator
- Tidal Intersperse
- Tidal Performance Analyzer
- Tidal Transaction Analyzer
- Tidal Intelligent Reporting
- Tidal Enterprise Reporter
- Cisco Intelligent Automation Cloud Automation

**Definitions**

For purposes of this Supplement, the following defined terms will apply:

- **Designated System** shall mean the designated platform for which Customer originally licensed the Software from Cisco for installation and use. Such designated platform may include, but is not limited to, a designation of the specific number of CPUs or system descriptions or names as approved by Cisco.
- **Movement and Usage Fees** shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System.
- **NFR** means not for resale, to be used for nonproduction, demonstration use only. Other Terms and Conditions

**Movement and Usage**. With respect to the license granted to the Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing Cisco with prior written notice to obtain updated keys, and pursuant to a new GSA Customer Purchase Order. Additional fees may apply. A fee schedule is available upon Customer’s written request to Cisco.

**License**. The license granted to the Software in the license section shall be perpetual if designated as such by Cisco at time of Customer order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above.

**NFR Software**. With respect to the License granted in the Agreement as to the use of any Software sold to Customer as NFR Software, the purchase of such Software is subject to the following additional restrictions:

1. **NFR purchases are available to all Cisco registered partners (categories include Select, Premier, Silver and Gold level partners). Cisco authorized training partners may also participate, but use is limited to instructional purposes only. Cisco has the sole discretion to define a registered partner and status.**
2. **Purchase limit is one NFR kit per operational installation for demonstration, proof of concept or internal nonproduction use.**
3. **Software cannot be resold, traded, copied, transferred, sublicensed, or used in any manner other than as NFR**
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

(This section shall replace the "License" section in the EULA)

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for the purpose of delivering Managed Services, the Software and the Documentation for which Customer has paid the required license fees. "Managed Services" means the performance by Customer of providing services for third parties (Subscribers) which will require communicating with and managing Cisco equipment not owned or leased by the Customer. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software that Cisco makes available with the Software in any manner (including on CD Rom, or on line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card. Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation or the applicable Supplemental License Agreement permits installation on non Cisco equipment) for communication with Cisco equipment not owned or leased by Customer in connection with Customer's provision of Managed Services to Subscriber. No other licenses are granted by implication, estoppel or otherwise. Upon termination of Managed Services to Subscriber, Customer is required to remove all deployed Software deployed by Customer to Subscriber's network and servers. Customer's license to use the Software is contingent upon Customer deploying or otherwise making available the Software and any Documentation in compliance with and subject to the Software Subscriber License Responsibilities listed below.

Software Subscriber License Responsibilities

The following license terms and responsibilities, substantially as stated here, will be accepted and agreed to, in writing or as otherwise provided in the EULA, by the Subscribers of Managed Services:

Subscriber agrees to be bound by the following terms and conditions. In the absence of a signed agreement, use of the Software by Subscriber or by Customer on Subscriber's behalf, or receipt by Subscriber of any direct or indirect benefit derived therefrom, shall constitute acceptance by Subscriber of the following terms:

1. Subscriber is granted a limited license from Cisco and its suppliers and licensors to use the Software solely in connection with the Managed Services and to the extent such Software is deployed by Customer on Subscriber's network or servers. 2. Upon termination of services to Subscriber, Customer is required to remove, and cooperate with Customer's efforts to remove, all deployed Software from the Subscriber's network and servers.

3. Subscriber may use the Software only in connection with the receipt of Managed Services from Customer, and for the purposes described in the Software's supporting Documentation if any.

4. Subscribers may only use the Software pursuant to these terms and Customer's license with Cisco and its suppliers and licensors, and Subscriber agrees to be governed by such terms and license including without limitation, the General Terms Applicable to the Limited Warranty Statement and End User License Agreement:

5. Subscriber may receive, or have deployed on its network or servers, updates, patches, error corrections or new or modified versions of the Software (collectively referred to as "Releases") from time to time. Releases are deemed part of the Software subject to the terms herein and the license with Cisco and its suppliers and licensors.

6. Subscribers acknowledge that all right, title and interest in and to the Software, the ideas and expressions contained therein, all updates and enhancements, all physical forms, regardless of where resident, whether permanent or transient, including authorized and unauthorized copies, any and all modifications made by Cisco, its suppliers and licensors, the software's supporting documentation, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating to the above are, and shall remain with Cisco and its suppliers and licensors. Subscriber is granted only a limited right of use as set forth herein:

7. Subscribers will not distribute, provide or make available, either directly or indirectly, to any person, organization or entity, any part of the Software, including but not limited to the code and the software's supporting documentation in any form except as directed by Customer in support of the delivery of Managed Services. 8. Subscribers will not place any portion of the Software into the public domain; And,
9. Subscribers will not copy, alter, translate, decompile, disassemble, reverse engineer or create derivative works of the Software, except that the Subscriber may make copies as required for the authorized use of the Software, may make copies of the supporting documentation as needed, and may make one additional copy of the Software for backup or archival purposes.

SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT FOR CISCO SYSTEMS’ MAGENTO MANAGED SERVICES (“MAGENTO SERVICES”) AND MAGENTO SOFTWARE (“MAGENTO SOFTWARE”).

IMPORTANT—READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT (“SLSA”) CONTAINS ADDITIONAL LIMITATIONS RELATING TO THE MAGENTO SERVICES AND MAGENTO SOFTWARE PROVIDED TO CUSTOMER UNDER THE END USER LICENSE AGREEMENT (“EULA”) BETWEEN CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLSA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLSA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE MAGENTO SERVICES OR MAGENTO SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLSA SHALL TAKE PRECEDENCE.

CUSTOMER’S RIGHT TO USE THE MAGENTO SERVICES IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE MAGENTO SERVICES PURCHASED BY CUSTOMER PURSUANT TO A VALID PURCHASE ORDER. CUSTOMER MAY USE THE MAGENTO SERVICES ONLY DURING THE PERIOD FOR WHICH SERVICES WERE PURCHASED BY CUSTOMER UNDER THE APPLICABLE SKU PURSUANT TO A VALID PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by The Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLSA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.”

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE MAGENTO SERVICES OR MAGENTO SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a limited, nonexclusive, non-transferable, worldwide license to access and use the Magento Services and the Documentation to provide the Network Services its customers, subject to the production server and development server limitations set forth in the Purchase Order. The foregoing license does not transfer or convey to Customer or any third party any right, title or interest in or to Magento Services, the Magento Software or Documentation or any associated intellectual property rights, but only a limited right of use revocable in accordance with the terms of the Agreement.

Restricted Use. Customer is purchasing the rights to access and use the then-current version of the Magento Software. Customer’s license specifically excludes any subsequent Major Releases of the Magento Software. No other updates, upgrades, or other Magento Software releases are licensed by Cisco to Customer hereunder.

Major Release means a release of Magento Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Magento Software version number [x.x.x]. Cisco does not warrant Major Releases will be compatible with prior software releases. Minor Release means an incremental release of Magento Software that provides maintenance fixes and additional Magento Software functions. Cisco designates Minor releases as a change in the tenths digit of the Magento Software version number [x.(x).x].

CUSTOMER RESPONSIBILITIES

(a) In performing the Magento Services, Cisco may instruct the Customer to perform certain tasks or checks relating to Customer’s network. Customer will, at its expense, perform all such checks and tests. Customer will also provide Cisco, or its authorized representative, reasonable access, at no cost to Cisco, to Customer’s networking equipment in connection with the Magento Services. Customer shall not be required to furnish specialized equipment or know-how. Any rework or additional work resulting from modification of the Magento Services requested by Customer (and accepted by Cisco) or any act or omission of Customer, including providing inaccurate information to Cisco will only occur pursuant to the parties executing a new Purchase Order. (b) Customer is responsible for obtaining all approvals required by any third parties in order for Cisco to perform any Magento Service under this Agreement. Cisco will not be responsible or otherwise liable for any failure to perform the Magento Services to the extent caused by Customer’s failure to obtain such third party approvals or if any third party otherwise prevents Cisco from performing the Magento Services.

(c) Customer will not resell the Magento Software or Magento Services or create or offer derivative versions of the Magento Software or Magento Services, either directly or indirectly through a third party.

(d) Customer will be responsible for its compliance with all privacy, data control or use laws and regulations relating to its use of the Magento Services, including without limitation any data contained in any reports provided by Cisco hereunder. Customer acknowledges the potential privacy and other issues associated with the collection and use of such data. Customer warrants and covenants that it will comply with all laws (including, without limitation, copyright laws, privacy laws and import and export laws) applicable to Customer or its use of the Magento Services. In addition, Customer is responsible for obtaining any permits or approvals relating to its use of the Magento Services, including without limitation any permits or approvals relating to transactions requiring its customer’s credit card information or other personally identifiable information.

(e) Customer will not use the Magento Services to send spam, viruses or malware.

(f) Customer understands the Magento Services are hosted by Cisco via a network utilized by Customer and other Cisco customers; Customer will not intentionally or unintentionally access data not owned by Customer or otherwise related to Customer’s use of the Magento Services, or log into, or attempt to log into, a server or account which Customer is not authorized to access.

(g) Customer will not attempt to probe, scan or test the vulnerability of a system or breach security or authentication measures without proper authorization.
(h) Customer will be responsible for handling all communication, technical support and business relations with its customers, including without limitation responding to inquiries and technical questions.

(i) Customer will be responsible for determining whether or not any reported defects or issues may be replicated and that they are isolated to the Magento Services or Magento Software.

(j) Customer is responsible for any catastrophic security events that result from any unauthorized configuration of the Magento Service components by Customer’s personnel.

The failure of Customer to comply with Customer’s responsibilities set forth above may be deemed a material breach of. Any termination shall be in accordance with FAR 12.302(b) and 52.233-1.

Customer Warranties. Customer represents, warrants and covenants that (i) it shall only use the Magento Services and Magento Software to provide Magento Services to its End Users only as permitted by any Capacity limitations set forth in the Purchase Order. If Customer wishes to utilize the Magento Software beyond the Capacity set forth in the Purchase Order, Customer shall be obligated to place a new Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

Content. Customer is and shall be solely responsible for the creation, renewal, updating, deletion, editorial content, control and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by Customer, and/or uploaded or routed to, passed through and/or stored on or within the Magento Services, or otherwise provided to Cisco in any medium or transmitted or routed using the Magento Services (“Customer Content”). Customer owns all right, title, and interest in the Customer Content, or possesses or shall possess all legally valid rights in the Customer Content necessary for the uses of the Customer Content contemplated herein. Customer shall not transmit or route to Cisco or the Magento Services, or otherwise direct via the MagentoServices, any Customer Content that (a) infringes any copyright, trade secret, or other intellectual property right, (b) contains libelous, defamatory, or obscene material under any applicable law, or (c) otherwise violates any federal laws or regulations relating to content or content distribution. Customer shall be responsible for utilizing Magento Services in accordance with the Documentation. If Customer has actual knowledge that any Customer Content infringes the intellectual property or other rights of a third party or violates any applicable federal laws or regulations (including, without limitation, laws and regulations relating to indecency or obscenity), Customer shall remove such Customer Content from Cisco’s origin server. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for Customer to operate and maintain its services to meet Customer’s purposes and objectives. During the Term, Customer grants to Cisco a limited, non-exclusive license to use the Customer Content solely for Cisco to perform the Magento Services as contemplated hereunder. In the case where at no material fault of Cisco, the Magento Services or Magento Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player (“WMP”) or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, Customer continues to allow its content to be accessed with any software or services operated in conjunction with the MagentoServices or Magento Software during the period where there is no fix for such DRM security breach, or Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then Customer acknowledges and agrees Cisco will not have any liability to Customer for any costs, damages or legal fees related to a DRM security breach. Neither this SLSA nor any rights or obligations under this SLSA shall be assigned by a party without the other’s prior written consent, in accordance with the provisions of the Anti-Assignment Act 41 USC 6305 and FAR 42.1204.

ADDITIONAL SERVICES
During the period Customer has purchased Magento Services, Cisco’s Software Application Support (SAS) service obligations are provided in Attachment 5. Customer is not eligible to receive Software Application Support Plus Upgrades (SASU) services, if any, included on such URL. Professional Services relating to the Magento Services or Magento Software purchased by Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed upon by the parties.
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product that is used with Cisco’s Unified Communications products, including features, functionality and solutions enabled in such Software (collectively, “Software Product”) licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined, will have the meaning assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government’s access and use of the Software Product, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

“Cisco UC Product” means the following products:

**Call Processing and System Management Applications**
Cisco Unified Communications Manager
Cisco Unified Communications Manager – IM & Presence
Cisco Unified Communications Manager – Basic Paging Server
Cisco Unified Communications Manager – Session Manager Edition
Cisco Emergency Responder
Cisco Unified Attendant Consoles
Cisco Unified Communications Management Suite (including Operations Manager, Service Manager, Service Statistics Monitor and Provisioning Manager)
Cisco Prime Collaboration Suite
Cisco Survivable Remote Site Telephony Manager
Cisco InterCompany Media Engine
**Messaging and Presence Applications**
Cisco Unity
Cisco Unity Connection
Cisco Unified Presence
**Contact Center Applications**
Cisco Unified Contact Center Express (including Work Force Management, Work Force Optimization, Quality Management, Compliance Recording)
Cisco Unified IP IVR
Cisco Unified Contact Center Enterprise (including Packaged Contact Center Enterprise and Email/Web Interaction Manager)
Cisco Unified Intelligence Center
Cisco Unified Contact Center Management Portal
Cisco Unified Customer Voice Portal
Cisco MediaSense
Cisco SocialMiner
Cisco Remote Expert Solution
(including Remote Expert Manager and Interactive Experience Manager)

**Conferencing, Collaboration and Social**
Cisco Webex
Cisco Unified MeetingPlace
Cisco TelePresence and Tandberg suites
Cisco Video Communications Server
Cisco Quad

Additionally, any bundled solutions including the applications listed above, including without limitation, Cisco Unified Communications Manager Business Edition 6000, are also licensed to run with the virtual machines.

“Software Product” includes the following two products: Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation.

In addition to the Agreement, the following supplemental terms apply:

1. You may use the VMware Products solely to operate and run in conjunction with the applicable CISCO UC Product or approved third party applications; they cannot be used in any manner independently from the CISCO UC Product or such third party applications. For purposes of this SEULA, “Approved Third Party Applications” include applications from Vendors enrolled in the “Collaboration” or “Complementary to Collaboration” categories within Cisco Solutions Plus or Cisco Developer Network Programs that are not listed in the Cisco Business Edition 6000 Co-residency Policy Document available at: http://www.cisco.com/en/US/products/ps11369/prod_white_papers_list.html All use shall terminate and cease when the use of the Cisco UC Product or Approved Third Party Applications terminates.
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Supplemental End User License Agreement

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In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT (“EULA”) FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(3) NOT FOR RESALE

This package contains a bundle of Cisco Unified Communications products (the “Cisco UC NFR Bundle”) made available under these terms only to qualified Cisco resellers and channel partners. In addition to the EULA terms set forth in Attachment 8 and any other Supplemental End User License Agreement (“SEULA”) terms (collectively, the EULA and the SEULA terms are referred to as the “Software Agreement”) accompanying or otherwise applicable to the software products enclosed (the “Software”), the following additional supplemental SEULA terms apply to the Software and are hereby incorporated as part of the Software Agreement:

The Cisco UC NFR Bundle Software is provided to you as a Cisco reseller or channel partner for your internal demonstration and testing purposes only. The Cisco UC NFR offering may only be used in internal lab or demonstration environments by the acquiring reseller or partner. The Software is not intended for and should never be used in production and may not be resold. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software. If a new release of a Software product included with the Cisco UC NFR Bundle is made available by Cisco and/or as a version of the included Software products is announced by Cisco to be at end of life, your license to use for testing and demonstration purposes of that product will terminate. Components of this Software are “NFR” or not for resale. You agree not to distribute the Software to a third party. The NFR Software does not include support and is not eligible for upgrades.

You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software (“Feedback”) then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT ("AGREEMENT") FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(2) NOT FOR RESALE

In addition to the Software Agreement, the following supplemental terms ("Supplement") apply to the Software licensed to you and are hereby incorporated as part of the Agreement: The Software is provided for your internal demonstration and testing purposes only. The Software is not intended for and should never be used in production. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software in a production environment. For the avoidance of doubt, components of this Software are NFR or not for resale. At no time does the license herein permit you to distribute the Software to a third party. You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software ("Feedback") then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback. In the event of a conflict between this Supplement and the Agreement, the Supplement shall control.
IMPORTANT: READ CAREFULLY

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This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For the purpose of this SEULA, we define the following terms:

"Authorized Service Provider" is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

"Intra-company Use" is a use of the Software Product which occurs within the same company/entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities. "Inter-company Use" is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of interconnecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-company Use also includes providing features of the Software Product in a commercially available service offering. "Restricted Features" means one or more of the following features: (i) Inter-company Multipoint encryption; and (ii) Intercompany HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

1. The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-company Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-COMPANY USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. IF YOU WERE TO USE THE RESTRICTED FEATURES FOR INTER-COMPANY USE, YOUR USE OF THE RESTRICTED FEATURES PRIOR TO SUCH AUTHORIZATION WOULD CONSTITUTE A BREACH OF THE AGREEMENT. Unless your use is through an Authorized Service Provider, you are not authorized to use the Restricted Features for Inter-company Use until the Restricted Features have been noted as a generally available feature set in the updated release notes for the Software Product, as posted by Cisco on cisco.com. Notwithstanding the foregoing, your Intra-company Use of the Restricted Features shall not be restricted by this paragraph.

2. The CTS-Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-company Use. The CTS-Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS-Manager per tenant.

3. The Commercial Express product contains software provided by VMware, Inc. or its affiliates, and use of VMware software is subject to the terms of the VMware ESX/ESXi End User License Agreement Attachment 10.
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Definitions

CPU means a central processing unit that encompasses part of a Server.

Evaluation Term means a sixty-day period during which the Software may be used solely for trial or evaluation purposes, free of additional charge.

Instance means a single copy of the Software. Each copy of the Software loaded into memory constitutes a single Instance. License Term means the period of time during which you are authorized to use the Software to deliver information technology services to your internal or external customers. The License Term varies depending on the license fee paid.

Server means a single physical computer or device on a network that manages or provides network resources for multiple users. Each Server must meet or exceed the following CPU requirements: Intel Nehalem, AMD Barcelona and a clock frequency of 1.8GHz.

Software means the CSR 1000V, successor versions, or other virtual software products that Cisco determines shall be governed under this SEULA. To run, the Software requires VMWare ESXi version 5.0 or higher.

Term means the License Term and any Evaluation Term.

Virtual Machine means a software container that can run its own operating system and execute applications like a Server. Service Provider means a company that provides information technology services to external end user customers.

Additional License Terms and Conditions

1. Cisco hereby grants You the right to install and use a single Instance of the Software during the Term. Upon expiration of the License Term, an Evaluation Term commences unless and until You renew the License Term by payment of the required license fees. Following expiration of the Evaluation Term, the Software communication interfaces shut down until all functionality ceases.

2. The Software may be deployed on a Server in a Virtual Machine. Each unique Instance of the Software requires payment of the applicable license fees. You may not run multiple Instances of the Software without payment of the applicable license fees.

3. Subject to the terms and conditions herein and payment of applicable license fees, You may use the Software as a Service Provider or to deliver hosted information technology services to your employees, agents, consultants and/or independent contractors, or to employees and contractors of your affiliated companies.

Description of Other Rights and Obligations. Please refer to the Cisco Systems, Inc. End User License Agreement.
Cisco End User License Agreement, AnyConnect
Secure Mobility Client, Release 3.0

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THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S ACCESS AND USE OF EACH CISCO OR CISCO-SUPPLIED SOFTWARE ("SOFTWARE").

License
Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-ROM, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable Purchase Order which has been accepted by Cisco and for which Customer has paid to Cisco the license fee as required by the "GSA Customer Purchase Order").

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal purposes. No other licenses are granted by implication, estoppel or otherwise. For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

General Limitations
This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under the Agreement, Customer shall have no right, and Customer specifically agrees not to:

(i) transfer, assign, sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;

(ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;

(iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;

(iv) publish any results of benchmark tests run on the Software;

(v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or

(vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment ofCisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

Software, Upgrades and Additional Copies
For purposes of the Agreement, "Software" shall include (and the terms and conditions of the Agreement shall apply to) computer programs, including firmware, as provided to Customer by Cisco or an authorized Cisco reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of any of the foregoing. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS
CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY. NOTHING CONTAINED HEREIN SHALL RESTRICT THE CUSTOMER'S RIGHT TO PROVIDE COPIES TO ITS DUTY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.

Proprietary Notices
Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco. NOTHING CONTAINED HEREIN SHALL RESTRICT THE GOVERNMENT’S RIGHT TO PROVIDE COPIES TO ITS DUTY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.

Term and Termination
The Agreement and the license granted herein shall remain effective until terminated. The parties may terminate the Agreement only in accordance with the procedures set forth in the FAR. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

Government Records
Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Cisco's normal business hours to verify compliance with this Agreement as long as Cisco complies with Customer's security requirements. In the event such audit discloses non-compliance with this Agreement, the parties shall negotiate a new GSA Customer Purchase Order to bring the Customer into compliance.

Export, Re-Export, Transfer and Use Controls
The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.) and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with export, re-transfer, transfer and use may be located at the following URL: http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/contract_compliance.html and is provided for informational purposes only.

U.S. Government End User Purchasers
The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. The Government agrees that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and accepts the rights and restrictions herein.

Limited Warranty
Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any); (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Customer who is the original licensee, Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Cisco or the party supplying the Software to Customer, if different than Cisco, within the warranty period. Cisco or the party supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

Restrictions
This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Cisco or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; or (f) any Software for which Cisco does not receive a license fee.

Disclaimer Of Warranty

Non-Endpoint means a computer, smartphone or other mobile device used in conjunction with any of the Software. Network Access For purposes of this SEULA, the following definitions

Definitions

If you acquired the Software in the United States, the Agreement and Hardware and Software warranties ("Warranties") are controlled by and construed under the Federal laws of the United States of America, notwithstanding any conflicts of law provisions. For all countries referred to above, the parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation. The Agreement has been written in the English language, and the parties agree that the English version will govern.

Supplemental End User License Agreement for Cisco Systems AnyConnect Secure Mobility and other SSL VPN-related Client Software

IMPORTANT: READ CAREFULLY

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For purposes of this SEULA, the Product name and the Product description You have ordered is any of the following ("Software"): • Cisco AnyConnect Secure Mobility Client

• Cisco AnyConnect Client

• Cisco AnyConnect Profile Editor

• Cisco AnyConnect Host Scan (HostScan)

• Cisco AnyConnect Diagnostics and Reporting Tool (DART)

• Cisco SSL VPN Client

• Cisco VPN Client

• Cisco Secure Desktop

• Smart Tunnels

• Port Forwarding

• Additional SSL VPN delivered applets

Definitions

For purposes of this SEULA, the following definitions apply:

"Endpoint" means a computer, smartphone or other mobile device used in conjunction with any of the Software. "Network Access Manager Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with IEEE 802.1X authentication functionality to manage wired and wireless network connections.

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an Endpoint device.
“Personal Information” means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

“Telemetry Module” means a separate module in the Cisco AnyConnect Secure Mobility Client to provide Personal Information and Non-personal Information from Endpoint devices to Cisco's web security infrastructure.

“Web Security Module” means a separate module in the Cisco AnyConnect Secure Mobility Client with functionality that redirects web traffic to the Cisco ScanSafe hosted web security infrastructure, for customers that have subscribed to Secure Mobility for ScanSafe and used in conjunction with Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security services.

Additional License Terms and Conditions

1. Installation and Use on Unlimited Number of Endpoint Devices
Cisco hereby grants You the right to install and use any of the Software listed above in this SEULA on an unlimited number of Endpoint devices, provided that, except with respect to the Network Access Manager Module as described in Section 2 below, each of those Endpoint devices must use the Software only to connect to Cisco equipment. These license grants are subject to export restrictions in the EULA and to the network equipment license restrictions in Section 3 below. You may make one copy of the Software for each such Endpoint device and a reasonable number of backup copies for the purpose of installing the Software on that Endpoint device.

2. Cisco AnyConnect Network Access Manager Module
The Network Access Manager Module, as described in the Cisco AnyConnect Secure Mobility Client Administrator Guide, may be used by You in conjunction with non-Cisco wired and wireless equipment for the purpose of connecting to non-Cisco network equipment. Support services (including Technical Assistance or TAC support) are only available if You have an active support contract for Cisco Products used in conjunction with the Network Access Manager Module. Support services will not be provided directly to your end users by Cisco.

3. Cisco Network Equipment and Hosted Service License Entitlements and Restrictions
Your use of the Software or specific features thereof with Cisco network equipment shall be subject to license entitlements and restrictions for the applicable Cisco network equipment or hosted services. Please consult Your administrator guide for the applicable Cisco network equipment or hosted services for the relevant license entitlements and restrictions.

4. Distribution to Third Party Business Partners and Customers
You may copy and distribute the Software to your duly authorized employees, agents, consultants, and/or independent contractors (collectively referred to as "employees") solely and exclusively for the purposes of accessing your Cisco equipment, provided that You shall remain responsible for compliance with the EULA and this SEULA by such employees. Each such distribution of the Software to a third party must be accompanied by a copy of the EULA and this SEULA.

5. No Support to Third Party Business Partners or Customers
Cisco will not provide end-user support (including Technical Assistance or TAC support) to any third party business partner or customer that receives the Software in accordance with Section 4 hereof. You shall be responsible for providing all support to each such third party.

6. Effect of Termination on Third Party Business Partners or Customers
In the event of termination of the Agreement, if applicable, You must use commercially reasonable efforts to notify the third party business partner or customer to whom You have distributed the Software that their rights of access and use of the Software have also ceased.

7. Data, Information and Privacy
   • Telemetry Module—If you install the Telemetry Module, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact You, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time either by turning the Telemetry Module off or by uninstalling the Telemetry Module. Configuration and uninstallation instructions for the Telemetry Module are available in Your Cisco AnyConnect Secure Mobility Client Administrator Guide.
   • Web Security Module—If You agree to this Agreement and install and utilize the Web Security Module to communicate with the Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security Services, You consent to Cisco's collection, use, processing and storage of Personal Information as described below. This Personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. None of this Personal Information will be used to identify or contact You, and use of the Personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information at any time by configuring the Cisco ScanSafe Web Filtering Service to anonymize Your end user data. Configuration instructions for the Cisco ScanSafe Web Filtering Service are available in Your Cisco ScanSafe Web Filtering Service Administrator Guide.
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Software shall include Cisco’s ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentation of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicensable (to Customer’s end users) license to use for Customer’s internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term-based subscription license to the service indicated as a SKU in the GSA Customer’s Purchase Order. The length of the license term (or subscription) shall be as indicated in the GSA Customer’s Purchase Order. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer’s copy of the Software online at Cisco’s website to obtain the necessary license key or license file.
Supplemental End User License Agreement

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SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (SEULA) contains additional terms and conditions for the Software licensed under the End User License Agreement (EULA) between you ("GSA Customer") and Cisco (collectively, the Agreement). Capitalized terms used in this SEULA, but not defined, will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. Software shall include Cisco’s ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicenseable (to Customer’s end users) license to use for Customer’s (and/or Customer’s end users’) internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term based subscription license to the service indicated as a SKU in your ordering documents. The length of the license term (or subscription) shall be as indicated in your ordering documents. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer’s copy of the Software online at Cisco’s website to obtain the necessary license key or license file.
This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (the GSA Customer) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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Product Name
ASA5585-20-AW3Y ASA 5585-X CX-20 AVC and Web Security Essentials 3Year

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicenseable (to Customer’s end users) license to use for Customer’s internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term based subscription license to the service indicated as a SKU in your ordering documents. The length of the license term (or subscription) shall be as indicated in your ordering documents. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer’s copy of the Software online at Cisco’s website to obtain the necessary license key or license file.
Supplemental End User License Agreement

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Product Name
L-ISE-ADS5Y-W-100= Cisco ISE 100 Endpoint 5 Year Wireless Subscription License

Identity Services Engine (ISE) Wireless License

The Cisco Identity Services Engine (ISE) Wireless Package License entitles the user to use the Base and Advanced features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Wireless License Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Wireless license allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 wireless endpoints).

Additional licenses can be purchased to support more wireless endpoints. The purchased license quantity will be listed in the sales order. The Identity Services Engine Wireless Package License is a 5 year subscription license and subject to the termination provisions stated in the FAR. In order to be able to deploy the ISE across different types of endpoints or access technologies (wired, wireless and vpn), customers have to purchase the Wireless Upgrade license. The Wireless Upgrade license allows for the ISE to be deployed with wired, wireless and vpn endpoints. The pre-requisite for installing the Wireless Upgrade license is having the Wireless license installed on the ISE.

The endpoint count of the Wireless Upgrade license has to be the same as the pre-installed Wireless license.

Support

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option, the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates.
Supplemental End User License Agreement

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Product Name
L-ISE-W-UPG-100= ISE 100 Endpoint 5 Year Wireless Upgrade Subscription Lic

Identity Services Engine (ISE) Wireless Upgrade License
The Cisco Identity Services Engine (ISE) Wireless Upgrade License entitles the user to use the Base and Advanced features and services for All Endpoints and not just limited to Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that the GSA Customer holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality
The Identity Services Engine Wireless Upgrade License provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing
A valid ISE Wireless Upgrade license allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine platform. The pre-requisite to install this license is the ISE Wireless License. This license entitles the user to support up to the quantity of licenses ordered. Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Wireless Upgrade License is a subscription license whose term will expire at the same time as the pre-installed Wireless license and is subject to termination provisions stated in the FAR. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates.
Supplemental End User License Agreement

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Product Name
L-ISE-ADV3Y-50K= Cisco ISE 50000 EndPoint 3Year Advanced Subscription License

Identity Services Engine (ISE) Advanced Package License

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that the Government holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the Government to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the Government Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the sales order.

The Government's subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco's receipt of the Government Purchase Order. The term expires after the duration specified in the Government Purchase Order has been reached. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.
Security Cisco ISE Migration DOC-7

Supplemental End User License Agreement

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Product Name
L-ISE-ADV-250-M= Cisco ISE 250 EndPoint Advanced + Base Migration License

Identity Services Engine (ISE) Advanced Package License

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the GSA Customer Purchase Order.

Your subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco’s receipt of the GSA Customer Purchase Order. The term expires after the duration specified in the GSA Customer Purchase Order. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.
Supplemental End User License Agreement for Cisco ISE All-in-One

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Product Name
For purposes of this SEULA, the Product name you have ordered is any of the following:
- Cisco ISE 1 Year Wireless Subscription License
- Cisco ISE 3 Year Wireless Subscription License
- Cisco ISE 5 Year Wireless Subscription License
- Cisco ISE 1 Year Wireless Upgrade Subscription License
- Cisco ISE 3 Year Wireless Upgrade Subscription License
- Cisco ISE 5 Year Wireless Upgrade Subscription License
- Cisco ISE 1 Year Advance Subscription License
- Cisco ISE 3 Year Advance Subscription License
- Cisco ISE 5 Year Advance Subscription License
- Cisco ISE Advance Migration Licenses

Identity Services Engine Term Licenses
Provided that you holds a valid license for the application software and that there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform, you are entitled to use the following Cisco Identity Services Engine (ISE) features and services depending on the Product you have ordered:

Cisco ISE Wireless Licenses
For the Cisco ISE Wireless Subscription License: you are entitled to use the Base and Advance features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription. A valid ISE Wireless Subscription License allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to the number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 wireless endpoints).

Cisco ISE Wireless Upgrade Licenses
For the Cisco ISE Wireless Upgrade Subscription License: you are entitled to use the Base and Advance features and services for all Endpoints (not just limited to Wireless Endpoints only), and to receive updates as made available during the term of the subscription. A valid ISE Wireless Upgrade Subscription License allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine Platform. The pre-requisite to install this ISE Wireless Upgrade Subscription License is the ISE Wireless Subscription License. AISE Endpoint Wireless Upgrade Subscription License entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints). The endpoint count of the ISE Endpoint Wireless Upgrade Subscription License has to be the same as the pre-installed ISE Endpoint Wireless Subscription; or Cisco ISE Advance Licenses.
For the Cisco ISE Advance Subscription License: you are entitled to use the Advance Package features, services, and to receive updates as made available during the term of the Subscription. The ISE Advance Subscription License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

Cisco ISE Advance Migration Licenses
For the Cisco ISE Advance Migration Licenses: you are entitled to use the Base and Advance features and services, and to receive updates as made available during the term of the Subscription. The ISE Advance Migration License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. The Cisco ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and an ISE Advance License with a 3-year term. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Base and Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).
Additional licenses
Additional ISE Licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

Term
The ISE Term Licenses are subscription-based, and have either a 1-year, 3-year, or 5-year term, except that: (a) the term of the ISE Wireless Upgrade License will expire at the same time as the pre-installed ISE Wireless License; and (b) the ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and a ISE Advance License with a 3-year term. The ISE Term Licenses are subject to the termination provisions contained in the FAR. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Features and Services may cease operation.

Features and Functionality
The ISE License provides features that require a valid license to operate. These features are supported on Cisco ISE hardware and software platforms.
Supplemental End User License Agreement for Cisco Systems Content Security Software

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This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product licensed under the End User License Agreement ("EULA") between You ("GSA Customer" as used herein means You and its duly authorized employees, agents, consultants and/or independent contractors and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For purposes of this SEULA, the Product name and the Product description you have ordered is any of the Following Cisco Systems Email Security Appliance ("ESA"), Cisco Systems Web Security Appliance ("WSA") and Cisco Systems Security Management Application ("SMA") (collectively, "Content Security") and their Virtual Appliance equivalent ("Software"): Cisco AsyncOS for Email Cisco AsyncOS for Web Cisco AsyncOS for Management Cisco Email Anti-Spam, Sophos Anti-Virus Cisco Email Outbreak Filters Cloudmark Anti-Spam Cisco Image Analyzer Intel Security Public Sector, Inc. Anti-Virus Cisco Intelligent Multi-Scan Cisco RSA Data Loss Prevention Cisco Email Encryption Cisco Email Delivery Mode Cisco Web Usage Controls Cisco Web Reputation Sophos Anti-Malware Cloudmark Anti-Malware Intel Security Public Sector, Inc. Anti-Malware Cisco Email Reporting Cisco Email Message Tracking Cisco Email Centralized Quarantine Cisco Web Reporting Cisco Web Policy and Configuration Management Cisco Advanced Web Security Management with Splunk Email Encryption for Encryption Appliances Email Encryption for System Generated Bulk Email Email Encryption and Public Key Encryption for Encryption Appliances Large Attachment Handling for Encryption Appliances Secure Mailbox License for Encryption Appliances

Definitions

For purposes of this SEULA, the following definitions apply:

“GSA Customer Service” means the GSA Customer’s email, Internet, security management services provided to employees and End Users for the purposes of conducting the GSA Customer’s internal business.

“End User” means: (1) for the WSA and SMA, the employee, agent, consultant and/or independent contractor or other agent authorized by the GSA Customer to access the Internet and the SMA via the GSA Customer’s Service; and (2) for the ESA, the email boxes of the employees, consultants, independent contractors, or other agents authorized by the GSA Customer to access or use the email services via the GSA Customer’s Service.

“GSA Customer Purchase Order” means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the GSA Customer and Cisco or the GSA Customer and a Cisco reseller, or the valid terms of any GSA Customer Purchase Order accepted by Cisco in connection therewith, containing the purchase terms for the Software license granted by this Agreement.

“Personally Identifiable Information” means any information that can be used to identify an individual, including, but not limited to, an individual’s name, user name, email address and any other personally identifiable information.
"Server" means a single physical computer or devices on a network that manages or provides network resources for multiple users. "Services" means Cisco Software Subscription Services. "Telemetry Data" means samples of the GSA Customer’s email and web traffic, including data on email message and web request attributes and information on how different types of email messages and web requests were handled by the GSA Customer’s Cisco hardware products. Email message metadata and web requests included in Telemetry Data are anonymized and obfuscated to remove any Personally Identifiable Information. "Term" means the length of the Software subscription you purchased, as indicated in the GSA Customer’s Purchase Order. "Virtual Appliance" means the virtual version of Cisco’s email security appliances, web security appliances, and security management appliances. "Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

Additional License Terms and Conditions

LICENSE GRANTS AND CONSENT TO TERMS OF DATA COLLECTION

License of Software.
The GSA Customer agrees to be bound by the terms of this Agreement, and so long as the GSA Customer is in compliance with this Agreement, Cisco hereby grants to The GSA Customer a nonexclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on Cisco's hardware products, or in the case of the Virtual Appliances, on a Virtual Machine, solely in connection with the provision of the GSA Customer's Service to End Users. The number of End Users licensed for the use of the Software is limited to the number of End Users specified in the Ordering Documents. In the event that the number of End Users in connection with the provision of the Company Service exceeds the number of End Users specified in the Ordering Documents, Company shall contact an Approved Source to purchase additional licenses for the Software. The duration and scope of this license(s) is further defined in the Ordering Document. The GSA Customer Purchase Order supersedes the EULA with respect to the term of the Software license. Except for the license rights granted herein, no right, title or interest in any Software is granted to the GSA Customer by Cisco. Cisco's resellers or their respective licensors. The GSA Customer’s entitlement to Upgrades to the Software is subject to any separate support contract that the GSA Customer may execute. This Agreement and the Services are co-terminus.

Consent and License to Use Data.
Subject to the Cisco Privacy Statement, Attachment 6. The Government hereby consents and grants to Cisco a license to collect and use Telemetry Data from the Company. Cisco does not collect or use Personally Identifiable Information in the Telemetry Data. Cisco may share aggregated and anonymous Telemetry Data with third parties to assist us in improving the GSA Customer’s user experience and the Software and other Cisco security products and services. The GSA Customer may terminate Cisco's right to collect Telemetry Data at any time by disabling SenderBase Network Participation in the Software. Instructions to enable or disable SenderBase Network Participation are available in the Software configuration guide.

Description of Other Rights and Obligations
Please refer to the Cisco Systems, Inc. End User License Agreement and Privacy Statement, Attachments 8 and 6.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS VIRTUAL SOFTWARE PRODUCTS:

IMPORTANT: READ CAREFULLY
This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA.

To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the GSA Customer’s access and use of the Software, the GSA Customer agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND.
YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Definitions
“CPU” means a central processing unit that encompasses part of a Server.
“Failover Pair” means a primary Instance and a standby Instance with the same Software configuration where the standby Instance can take over in case of failure of the primary Instance.
“Instance” means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.
“Server” means a single physical computer or device on a network that manages or provides network resources for multiple users.
“Virtual Machine” means a software container that can run its own operating system and execute applications like a Server.
“Service Provider” means a company that provides information technology services to external end user customers.

Additional License Terms and Conditions
1. Cisco hereby grants you the right to install and use the Software listed above in this SEULA on single or multiple Cisco or non-Cisco Servers or as a Virtual Machine.
2. A unit license fee to Cisco or an authorized Cisco reseller shall be due for each Cisco or non-Cisco Server CPU on which the Software is installed, per Virtual Machine run by the Software, or per Instance, as determined by Cisco. Cisco also reserves the right to offer, in its sole discretion, versions of the Software that may not be subject to a unit license fee.
3. For the Adaptive Security Appliance 1000V Cloud Firewall Software, You are licensed to the number of Instances of the Software equal to the number of CPUs covered by the unit license fee, and if You deploy a Failover Pair, for an additional standby Instance for each primary Instance.

Description of Other Rights and Obligations
Please refer to the Cisco Systems, Inc. End User License Agreement, Attachment 8.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS INTEGRATED SECURITY APPLIANCE
SOFTWARE:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Definitions
For purposes of this SEULA, the following definitions apply:

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

Additional License Terms and Conditions

Term License
The Software is licensed for the one (1) or three (3) year license term, as set forth in the Software purchase order documentation.

Version 1.0

Data, Information and Privacy
If You agree to this Agreement, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information, and the transfer of Personal Information and Non-personal Information to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, as described in Cisco's Privacy Statement included as Attachment 6.
Supplemental End User License Agreement for Access Control System

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you ("GSA Customer") and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE; OR (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Product Name

For purposes of this SEULA, the Product the Government has ordered is any of the following:

ACS 1121 Appliance With 5.x SW And Base license
ACS 1121 Appliance And 5.x SW Upgrade from Previous Versions
ACS application & BASE license for SNS-3415-K9 appliance
Upgrade to ACS application on SNS-3415-K9 appl. w/ BASE license
ACS 5.2 VMWare Software And Base License
ACS 5.2 VMWare SW + Base License Upgrade from Previous Versions
ACS 5.2 VMWare SW + Base License (Electronic Delivery)
ACS 5.2 VMWare SW Upgrade (Electronic Delivery)
ACS 5.3 VMWare Software And Base License
ACS 5.3 VMWare SW + Base License Upgrade from Previous Versions
ACS 5.3 VMWare SW + Base License (Electronic Delivery)
ACS 5.3 VMWare SW Upgrade (Electronic Delivery)
ACS 5.4 VMWare Software And Base License
ACS 5.4 VMWare SW + Base License Upgrade from Previous Versions
ACS 5.4 VMWare SW + Base License (Electronic Delivery)
ACS 5.4 VMWare SW Upgrade (Electronic Delivery)

1. ADDITIONAL LICENSE RESTRICTIONS

Installation and Use of Cisco Secure Access Control System: The Cisco Secure Access Control System ("ACS") Software component of the Cisco Hardware Platform is preinstalled. CDs containing tools to restore this Software to the Hardware are provided to you for installation purposes only. You may only run the supported Cisco Secure Access Control System Software product on the Cisco Hardware Platform designed for its use. No unsupported software product or component may be installed on the Cisco Hardware Platform. Each Cisco Secure Access Control System is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on one and only one Cisco Secure Access Control System. Installation and Use of Cisco Secure Access Control System Software for Virtual Machine: The Cisco Secure Access Control System ("ACS") Software for Virtual Machine can run and is supported only on versions of Virtual Machine specified in the product documentation. Each copy of Cisco Secure ACS Software for Virtual Machine is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on one and only one running Instance of Cisco Secure ACS Software.

2. DEFINITIONS

“Instance” means a single copy of the Software. Each copy of the Software loaded into memory is an Instance. “Server” means a single physical computer or device on a network that manages or provides network resources for multiple users. “Virtual Appliance” means the virtual version of Cisco’s email security appliances, web security appliances, and security and identity management appliances. "Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

“Intragovernmental Features” are those features that are deployed within an enterprise and do not traverse a service provider network for the purpose of interconnecting and communicating to other enterprises. This does not include transport provided for communication within the enterprise allowing it to communicate to itself.

“Inter-company Features” are those features that provide support for communications between enterprises through a service provider network.

In addition to the Agreement, the following supplemental terms apply to Inter-company Features. Multipoint encryption for Inter-company feature is available in the Software Product but you are not authorized to use it until you have been permitted to do so upon notice from Cisco.
| TelePresence | Cisco TelePresence Manager | DOC-14958 DOC-29311 |
| TelePresence | Cisco TelePresence Express Multipoint Switch | DOC-14958 DOC-29311 |

Please see the SEULAs starting above for (DOC-29311) and for (DOC-14958) for the SEULAs applicable to these offerings.
IMPORTANT: READ CAREFULLY

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For the purpose of this SEULA, we define the following terms:

"Authorized Service Provider" is a service provider that has an agreement with Cisco explicitly authorizing support for the Restricted Features.  "Intra- Governmental Use" is a use of the Software Product which occurs within the government and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities.  "Inter company Use" is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of inter connecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter company Use also includes providing features of the Software Product in a commercially available service offering. "Restricted Features" means one or more of the following features: (i) Inter company Multipoint encryption; and (ii) Inter company HD/SD Inter Operability.

In addition to the Agreement, the following supplemental terms apply:

1. The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTERGOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER.  You are not authorized to use the Restricted Features for Inter-Governmental Use until the Cisco notifies the GSA Customer Restricted Features are generally available feature sets in the updated release notes for the Software Product. Notwithstanding the foregoing, your Intra-Governmental. Use of the Restricted Features shall not be restricted by this paragraph.

2. The CTS Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-Governmental Use. The CTS Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS Manager per tenant.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

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In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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“Authorized Service Provider” is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features. “Intra-Governmental Use” is a use of the Software Product which occurs within the same Government entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same entities. “Inter-Governmental Use” is a use of the Software Product which occurs between two or more Government entities and which traverses a service provider network for the purpose of interconnecting and communicating to other entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-Governmental Use also includes providing features of the Software Product in a commercially available service offering. “Restricted Features” means one or more of the following features: (i) Inter-Governmental Multipoint encryption; and (ii) Inter-Governmental HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product, but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-GOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. The Government is not authorized to use the Restricted Features for Inter-Governmental Use until Cisco notifies the GSA Customer that the Restricted Features are available feature sets. Notwithstanding the foregoing, the GSA Customer’s Intra-Governmental Use of the Restricted Features shall not be restricted by this paragraph.
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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SUPPLEMENTAL LICENSE AGREEMENT


The GSA Customer's right to use the Software is limited solely to those products components of the Software (including but not limited to the Video Back Office, Video Control Plane, CDN Analytics, CDN Provisions Manager Components) purchased by GSA Customer pursuant to a valid GSA Customer Purchase Order. All other uses are strictly prohibited.

With respect to the software licensed under this SLA, (a) "Services" will apply solely to Cisco's Performance of services relating to the Software; and (b) the term "Network" relating to the Cisco Severity and Escalation Guidelines, will be defined to apply solely to the Software.

When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF GSA CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE SOFTWARE.

License; Additional Restrictions. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, non-transferable, worldwide, royalty-free license to use the Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the capacity limitations set forth in the description of the product associated with the product SKU (collectively, "Capacity") set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of the Agreement.

Restricted Version and Use. GSA Customer may install and use the Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the Software. No other Updates, upgrades, or other Software releases are licensed by Cisco to GSA Customer hereunder.

Major Release means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [x(x)x].

Minor Release means an incremental release of Software that provides maintenance fixes and additional Software functions.

Cisco designates Minor releases as a change in the tenths digit of the Software version number [x(x)x].

Customer Warranties

GSA Customer represents, warrants and covenants that (i) it shall only use the Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the Software beyond the Capacity set forth in the GSA Customer Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.
As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the Software ("GSA Customer Content"). GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's business purposes and objectives.

ADDITIONAL SERVICES
Professional Services and/or Support Services relating to the Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.
<table>
<thead>
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<th>Component Description</th>
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<tr>
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</table>

**IMPORTANT: READ CAREFULLY**

**Dear Customer,**

**Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND. OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

**SUPPLEMENTAL LICENSE AGREEMENT**

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEOSCAPE MEDIA SUITE SOFTWARE ("VMS SOFTWARE"): CMS, ENTITLEMENT, PUBLISHER, MEDIA STREAMING PLAYER, MEDIA DOWNLOAD APPLICATION

IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE VMS SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE VMS SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

GSA CUSTOMER’S RIGHT TO USE THE VMS SOFTWARE IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE VMS SOFTWARE (INCLUDING BUT NOT LIMITED TO THE CMS, ENTITLEMENT, PUBLISHER, STREAMING PLAYER OR DOWNLOAD APPLICATION COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. WITH RESPECT TO THE VMS SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO’S PERFORMANCE OF SERVICE RELATING TO THE VMS SOFTWARE, INCLUDING ANY SERVICES PROVIDED BY CISCO PURSUANT TO EXHIBIT C; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE VMS SOFTWARE.

IF CUSTOMER DOES NOT AGREE TO SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE VMS SOFTWARE.

**LICENSE; ADDITIONAL RESTRICTIONS**

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a perpetual, nonexclusive, non-transferable, worldwide, royalty-free license to use the VMS Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the User Capacity, Transaction Capacity or Title Capacity (collectively, "Capacity") limitations set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer any right, title or interest in or to the VMS Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of this Agreement.

**Restricted Version and Use.** GSA Customer may install and use the VMS Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the VMS Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the VMS Software. No other Updates, upgrades, or other VMS Software releases are licensed by Cisco to GSA Customer hereunder. Major Release means a release of VMS Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the VMS Software version number [x].x.x.

Minor Release means an incremental release of VMS Software that provides maintenance fixes and additional VMS Software functions. Cisco designates Minor releases as a change in the tenths digit of the VMS Software version number [x.(x).x].

**GSA Customer Warranties.** GSA Customer represents, warrants and covenants that (i) it shall only use the VMS Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the VMS Software beyond the Capacity set forth in the Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practicable.

Content. As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the VMS Software ("GSA Customer Content").

GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. GSA Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content. IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's purposes and objectives. In the case where at no material fault of Cisco or the VMS Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify GSA Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. In such case, Cisco shall notify GSA Customer of such breach as soon as possible. If, after receiving such DRM breach notice, GSA Customer continues to allow its content to be accessed with any software or services operated in conjunction with the VMS Software during the period where there is no fix for such DRM security breach, or GSA Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then GSA Customer acknowledges and agrees Cisco will not have any liability to GSA Customer for any costs, damages or legal fees related to a DRM security breach.

ADDITIONAL SERVICES
Professional Services and/or Support Services relating to the VMS Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO WEBEX MEETINGS SERVER SOFTWARE:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED USB DRIVE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

1. Cisco WebEx Meetings Server (the "Software") is a software-based enterprise conferencing product that integrates audio, video and web conferencing in a single, on-premises solution.

2. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicensable (to GSA Customer's end users) license to use for GSA Customer's and/or GSA Customer's end users' internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. The server component of the Software may be installed only on Cisco hardware that is: (a) operated by GSA Customer, or (b) operated by a third party under the GSA Customer's direct control. GSA Customer may copy and distribute the component client of the Software to its duly authorized agents, consultants and/or independent contractors solely and exclusively in connection with allowing such third parties to attend meetings hosted by GSA Customer using the Software, provided that GSA Customer shall remain responsible for such third parties' compliance with the Agreement. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on USB Drive or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Version 1.0

3. User Licenses.

"Employees" are the full and part-time employees, agents, consultants and/or third-party independent contractors of GSA Customer. Employees may include third-party contractors, only if (a) GSA Customer allows the third-party contractor to use the Software only for the benefit of GSA Customer, (b) GSA Customer does not charge the third-party contractor for the use of the Software, and (c) GSA Customer takes full liability for the actions of the third-party contractor, including, but not limited to the third-party contractor's misuse of the Software. "User" is a GSA Customer Employee assigned an account by GSA Customer to use the Software to host meetings. A User may host an unlimited number of meetings ("Meeting(s)") using the Software; provided that a User may only host one (1) Meeting at a time. Each Meeting must be hosted by a User and is limited to the maximum number or participants as determined by the capacity of the Software licensed by GSA Customer.

4. Limited User Licenses. GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the "GSA Customer Purchase Order"). GSA Customer may only have as many Users as allowed under any and all applicable GSA Customer Purchase Orders. GSA Customer understands and agrees that the Software will perform internal checks to compare the number of Users using the Software with the number of Users licensed by GSA Customer, and if it repeatedly finds more Users than authorized, Cisco will provide notice to the GSA Customer and provide the GSA Customer with the opportunity to negotiate additional GSA Customer Purchase Orders to bring the GSA Customer into compliance.

5. Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings and any other material ("Content") used, displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

6. Privacy. GSA Customer understands and agrees that, as part of Cisco providing support to GSA Customer, Cisco may request access to and use of technical or diagnostic information (e.g., server logs) that may contain Personal Information and Non-personal Information of GSA Customer and/or GSA Customer's meeting invitees ("Server Data"). If you provide such Server Data to Cisco, you consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purposes of providing GSA Customer support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact individual users, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, included as Attachment.

7. GSA Customer may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time by not providing Cisco access to the Server Data. Active steps are required each time by the System Administrator to provide Cisco access to the Server Data.
7. GSA Customer agrees that it will not use the Software to send unsolicited email outside GSA Customer's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). GSA Customer further agrees not to use the Software to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation.

8. The Software may not be appropriate for use in all countries. GSA Customer agrees that GSA Customer will comply with all applicable laws and regulations in connection with GSA Customer's use of the Software, including, but not limited to: (a) with respect to personally identifiable information sent or received by GSA Customer, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx Meetings Server meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of GSA Customer to ensure it has the right to use all features of the Software. Cisco may modify or not make available the Software and/or certain Software features to comply with applicable laws and regulations. The Software is subject to U.S. and local export control laws and regulations. GSA Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of the Software and will obtain all required U.S. authorizations, permits, or licenses. The export obligations under this clause shall survive the expiration or termination of the Agreement.

9. The Software contains certain third party database products ("Third Party Database Products") that may impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure the Third Party Database Products separately and independently from the Software. GSA Customer shall not navigate the underlying data schema of the Third Party Database Products. GSA Customer shall not access the Third Party Database Products or Version 1.0 establish the transfer of data without Cisco Application Programmer Interfaces APIs. GSA Customer shall not upgrade the Third Party Database Products separately, but only as a component of Third Party Database Products.

10. Oracle Java SE Terms and conditions. (i) Trademarks and Logos. This SEULA does not authorize an end user licensee to use any Oracle America, Inc. name, trademark, service mark, logo or icon. The GSA Customer acknowledges that Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks"). and agrees to: (a) comply with the Java Trademark Guidelines included as Attachment 7; (b) not do anything harmful to or inconsistent with Oracle's rights in the Java Marks; and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by Customer in any Java Mark. (ii) Third Party Code. Additional copyright notices and license terms applicable to portions of the Oracle Java SE software are set forth in the THIRDPARTYLICENSESREADME.txt file. (iii) Commercial Features. Use of the Commercial Features for any commercial or production purpose require a separate license from Oracle.

SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS WEBEX SOCIAL SOFTWARE:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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1. WebEx Social Software is an enterprise collaboration platform that may provide different functionality including, but not limited to: content/documents (content development, content management, portals, and Intranets); communication (voice/video, instant messaging, conferencing, and email); business process (business applications, vertical applications, customer care, and workflow); and social networking (profiles, teams, communities, networks).

2. License. Conditioned upon compliance with the terms and conditions of this Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicensable (to GSA Customer’s end users) license to use for GSA Customer’s (and/or GSA Customer’s end users’) internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. “Documentation” means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-Rom, or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer’s copy of the Software online at Cisco’s website to obtain the necessary license key or license file.

3. GSA Customer’s license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the “GSA Customer Purchase Order”).

4. Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications and any other material (“Content”) displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

5. Third Party Offerings. Certain uses of Software may allow Customer to evaluate and use third-party applications and/or services (“Third Party Offerings”). Third Party Offerings may involve the exchange of data with the Software. Cisco is not responsible for Customer’s data outside of the Software or for modifications or deletions of Customer’s data made by third parties or their Third Party Offerings.

6. Use of Twitter Services. GSA Customer’s use of Twitter Services is governed by and Twitter Terms of Services.

7. WebEx Social Software contains certain Oracle database products (“Oracle Products”) that impose additional restrictions on GSA Customer’s use. GSA Customer shall not install or configure Oracle Products separately and independently from WebEx Social Software. Except for Enterprise Manager, GSA Customer shall not access Oracle Products directly or through other database tools, but rather only through WebEx Social Software. GSA Customer shall not navigate the underlying data schema of Oracle Products. GSA Customer shall not access Oracle Products or establish the transfer of data without Cisco APIs. GSA Customer shall not upgrade Oracle Products separately, but only as a component of Oracle Products.

8. WebEx Social Software contains IBM Licensed Materials. Copyright IBM Corporation 2009. IBM Licensed Materials or their modifications may not be used for any purpose other than to enable WebEx Social Software.
Attachment 1

This Service Level Agreement (this "Agreement") sets forth Cisco Meraki’s obligations and our customers’ rights with respect to the performance of Cisco Meraki’s Hosted Software. All capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in the End Customer Agreement above (the Meraki SEULA), or as otherwise entered into between Cisco Meraki and Customer (the "Customer Agreement").

1. Definitions. For purposes of this Agreement, the following terms have the meaning ascribed to each term below:

   "Downtime" means if the Hosted Software is unavailable to Customer due to failure(s) in the Hardware, Firmware, or Hosted Software, as confirmed by both Customer and Cisco Meraki.

   "Monthly Uptime Percentage" means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

   "Service Credit" means the number of days that Cisco Meraki will add to the end of the Term, at no charge to Customer.

2. Service Level Warranty. During the Term, the Hosted Software will be operational and available to Customer at least 99.99% of the time in any calendar month (the "Service Level Warranty"). If the Monthly Uptime Percentage does not meet the Service Level Warranty in any calendar month, and if Customer meets its obligations under this Agreement, then Customer will be eligible to receive Service Credit as follows:

<table>
<thead>
<tr>
<th>Uptime Days Credited</th>
<th>3</th>
<th>7</th>
<th>15</th>
</tr>
</thead>
<tbody>
<tr>
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<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 99.9% - 99.0%</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 99.0%</td>
<td>15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Customer Must Request Service Credit. In order to receive any of the Service Credits described above, Customer must notify Cisco Meraki within 30 days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

4. Maximum Service Credit. The aggregate maximum amount of Service Credit to be issued by Cisco Meraki to Customer for all Downtime that occurs in a single calendar month will not exceed 15 days. Service Credit may not be exchanged for, or converted into, monetary amounts.

5. Exclusions. The Service Level Warranty does not apply to any services that expressly exclude this Service Level Warranty (as stated in the documentation for such services) or any performance issues (i) caused by Force Majeure on the terms set forth in Section 9.3 of the Agreement, (ii) that resulted from Customer’s equipment or third party equipment, or both (not within the primary control of Cisco Meraki), or (iii) that otherwise resulted from Customer’s violation of Sections 3.5 or 4.2 of the Agreement.

6. Exclusive Remedy. This Agreement states Customer’s sole and exclusive remedy for any failure by Cisco Meraki to meet the Service Level Warranty.
Attachment 2

Meraki Support Overview:

**Enterprise support at no additional cost**
Cisco Meraki's simple, all-inclusive pricing includes enterprise-class phone support. We will help you deploy your first network or troubleshoot global network issues and other unforeseen emergencies at no additional cost.

**Deep expertise and fanatical service**
Our support engineers have deep expertise in enterprise networking and wireless design. The Cisco Meraki support team sits alongside the engineers who build Cisco Meraki products, providing a wealth of expertise.

**Real time cloud-based support tools**
Cisco Meraki support engineers use real time web-based tools to securely and quickly diagnose and troubleshoot your network, providing the speed and service of an on-site visit without the hassle.

**The best support call is the one you don't have to make**
Cisco Meraki self-provisioning hardware, automatic firmware updates, automatic network optimization, intuitive user interface and built-in contextual help dramatically reduce support incidents, providing reliable and hassle free enterprise networking.

**Meraki Support Includes**
Access to knowledge base
Case-based support viewable in dashboard
Firmware and software upgrades and updates
24×7 telephone support based out of San Francisco, London, Sydney technical assistance centers

**Contact Support**

Log in to submit cases.

**Telephone support**
- US/North America
  - (415) 432-1203
- Europe
  - +44 20-78-71-2776
- Australia / Asia-Pacific
  - New Zealand
  - Singapore
    - +61 285203058
    - +64 99749591
    - +65 31582108
  - Mexico
  - +52 5511638940
  - Brazil
    - +55 1130422855

**Note**
Starting on January 1, 2014, you will need your Cisco Meraki account number in order to access telephone support. This number is available on the help tab of the Meraki dashboard.
Meraki Privacy Policy

This privacy policy (this "Policy") describes the collection of personal information and certain other information by Meraki, LLC, a Delaware limited liability company and a wholly owned subsidiary of Cisco Systems, Inc. ("Meraki," "we," or "us") from users of our Web site at meraki.cisco.com (the "Website") as well as all applications, widgets, software, tools, and other services provided by us and on which a link to this Policy is displayed (collectively, together with the Website, our "Services"). This Policy also describes our use and disclosure of such information. By using our Services, you consent to the collection, use, and disclosure of information in accordance with this Policy. This Policy is incorporated by reference into the Meraki Terms of Use and the Meraki End Customer Agreement and is subject to the provisions of the Meraki Terms of Use and the Meraki End Customer Agreement. The terms "you," "your," and "user" refer to the user visiting the Website or accessing or using the Services. Other capitalized terms used but not defined in this Privacy Policy have the meanings given to them in the Terms of Use.

Meraki has received TRUSTe's Privacy Seal signifying that this privacy policy and our practices have been reviewed for compliance with the TRUSTe program viewable on the validation page available by clicking the TRUSTe seal. If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please contact TRUSTe.

The TRUSTe certification covers our collection, use and disclosure of information we collect through our Services. The use of information collected through our Services shall be limited to the purpose of providing the service for which the customer has engaged Meraki.

Meraki complies with the U.S. – E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Meraki has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view Meraki’s certification included under Cisco Systems Inc.’s company certification, please visit http://www.export.gov/safeharbor.

Personal Information

"Personal Information," as used in this Policy, is information that specifically identifies an individual, such as an individual’s name, address, telephone number, or e-mail address. Personal Information also includes information, such as demographic information (e.g., date of birth, gender, geographic area, and preferences), when any of this information is linked to Personal Information that identifies that individual.

Personal Information does not include "aggregate" or other non-personally identifiable information. Aggregate information is information that we collect about a group or category of products, services, or users that is not personally identifiable from which individual identities are removed. We may use and disclose aggregate information, and other non-personally identifiable information, for various purposes at our sole discretion and without notice or liability to you.

Collection of Information

Collection of Voluntarily-Provided Information

We collect Personal Information that our users provide to us in a variety of ways on our Services. These include the following:

- **E-mail Newsletters.** We may offer e-mail newsletters from time to time on our Services. If you sign up to receive a newsletter from us, we collect your e-mail address.

- **User Accounts and Profiles.** Our Services may give you the ability to register for an account or to create and update a user profile. If we offer user account or profile functionality on the Services, we will collect the Personal Information that you provide to us in the course of registering for an account or creating or updating a user account or profile. This information may include, for example, name, postal address, telephone number, e-mail address, and related demographic information about you. We may indicate that some Personal Information is required for you to register for the account or to create the profile, while some is optional.

- **Logging into Networks.** Certain networks using our Services may require users to establish or use login credentials. In connection with supporting this log-on functionality, we may collect information such as email addresses, telephone numbers, or user or administrator-created usernames, along with user-created or administrator-created passwords, to facilitate such log-on functionality and otherwise to provide our Services.

- **Correspondence.** If you contact us by e-mail, using a contact form on the Services, or by other means, we collect the Personal Information contained within, and associated with, your correspondence.

- **Contests and Sweepstakes.** We and other business partners may conduct or sponsor special contests, sweepstakes, and other promotions. Users may enter or otherwise participate in our Contests and Sweepstakes. Certain of these promotions may be co-branded with one of our advertisers or other business partners. In these instances, the collection of your Personal Information may occur directly by the third-party partner on its website or other online service and may be shared with us. The promotion will state the privacy policy or policies governing the collection of such personal information.

- **Testimonials.** We display testimonials of satisfied customers on our site in addition to other endorsements. With your consent we may post your testimonial along with your name.

- **Information Related to Data Collected for our Customers.** Meraki collects information under the direction of its customers, and has no direct relationship with the individuals whose personal data it processes. If you are an individual who makes use of services offered by one of our customers and would no longer like to be contacted by that customer, please contact the customer that you interact with directly. We may transfer personal information to companies that help us provide our Services. Transfers to subsequent third parties are covered by the service agreements with our customers.

Passive Information Collection

When you use or visit our Services, some information is collected automatically. For example, when you access our Services, we automatically collect your browser’s Internet Protocol (IP) address, your browser type, the nature of the device from which you are visiting the Services (e.g., a personal computer or a mobile device), identifiers for any handheld or mobile device that you may be using, the Web site that you visited immediately prior to accessing any Web-based Services, the actions you take on our Services, and the content, features, and activities that you access and engage with on our Services. We also may collect information regarding your interaction with e-mail messages from Meraki, such as whether you opened, clicked on, or forwarded a message.

We may collect this information passively using technologies such as standard server logs, cookies, and clear GIFs (also known as "Web beacons"). We use passively-collected information to administer, operate, maintain and improve our Services and our other services and systems and to provide content that is tailored to you.

If we link or associate any information gathered through passive means with Personal Information, or if applicable laws require us to treat any information gathered through passive means as Personal Information, we treat the combined information as Personal Information under this Policy.

Otherwise, we use and disclose information collected by passive means in aggregate form or otherwise in a non-personally identifiable form. Please be
aware that in the course of your use of the Services, websites or other services provided by third parties ("Third-Party Services"), including marketing or website optimization vendors, may set cookies on your hard drive or use other means of passively collecting information about your use of their Third-Party Services or other content. To do this, they may use first-party cookies (which are set by the same domain your browser is receiving data from) or third-party cookies (which are set by a different domain). Meraki also may make non-personally identifiable information available to Third-Party Services, and these Third-Party Services may collect such information, to assist such parties in understanding our users' activities and usage patterns on the Services. If desired, you may use the Google Analytics Opt-out Browser Add-on to opt-out of having information collected by Google Analytics.

We do not have access to, or control over, the actions of Third-Party Services. Each provider of Third-Party Services uses information that it collects in accordance with its own privacy and security policies.

Additionally, please be aware that Google and other third-party vendors may place or recognize one or more unique cookies on your computer when you use the Services, and may record information to these cookies based upon your activities on our Services and on third-party websites and other Third-Party Services. Google and these other third-party vendors may use information about those activities to inform, optimize, and serve advertisements. In particular, we may use Google and other third-party vendors to engage in “remarketing,” in which advertisements you see on third-party websites may be based on your prior visits to our Services.

To learn more about these practices, and to opt-out from Google's and other vendors' use of information collected on the Services through cookies for advertising purposes, you may visit Google's Ads Preferences Manager, TRUSTe's Privacy Manager, or the Network Advertising Initiative opt-out page. Please note that opting-out will not prevent advertisements from being served to you on the Internet; it will only result in advertisements that utilize cookies to serve advertisements on the specified advertising networks from which you opt-out no longer being targeted. We are not responsible for the activities of other parties that may not comply with your opt-out requests.

We also use Google Conversion Tracking, which tracks whether users engage in certain activities (e.g., filling out a form to receive more information about our products or services) after they view one of our advertisements on a Third-Party Service. Google uses cookies to track conversions and to report that information to us.

Finally, please also be aware that we use the Google Maps API as a source of maps, geographic data, and geolocation information for purposes of providing location-based information regarding terminal devices connected to networks managed by our Services and for providing related reporting and analysis. Google may collect information, including personal information, from those who view content provided through the Google Maps API, and Google handles such information in accordance with the Google Privacy Policy.

Network Usage Information Collected by Our Services
Some of our Services collect information from terminal devices connected to networks that are managed by those Services. Those Services also collect information regarding the performance of, and certain other information regarding, such networks. This information includes, for example, MAC address, device type, operating system, geolocation information, and network traffic information (e.g., hostnames, protocols, port numbers, and IP addresses). This information is made available to administrators of networks managed by our Services through an online interface that we call the "dashboard".

Additionally, if a Meraki customer elects to use our device management tool currently known as Systems Manager ("Systems Manager") and installs its software on, or configures the profile of, a mobile device or other device (e.g., a laptop computer) managed by Systems Manager, the customer or Meraki may undertake certain actions on the device, such as the following: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots; (iv) manage the device through remote desktop functionality; (v) set and enforce policies; and (vi) install/remove apps. Finally, for devices with Systems Manager installed or devices that utilize Global Positioning System (GPS) technology, we transmit certain geolocation information about those devices and the network(s) on which they are running to Google, which provides us with related geolocation information that we store and make available to network administrators through our dashboard as described above in this paragraph. Google handles the information that we provide to it in accordance with the Google Privacy Policy.

Information from Other Sources
We may receive information about you, including Personal Information, from affiliated and unaffiliated third parties, and may combine this information with other Personal Information we maintain about you in order to ensure we have accurate information. If we do so, this Policy governs any combined information that we maintain in personally identifiable format.

Use of Information
We use Personal Information and other information we collect to do any of the following: provide services to our customers; provide information and otherwise respond to your requests, including sales inquiries, email requests, and shipping requests; enhance, improve, operate, maintain, and debug the Website, our other Services, and our other programs, services, Web sites, and systems; improve the effectiveness of our Website as a marketing tool and for performance of the Website and our other Services; prevent fraudulent use of our Services and other systems; to prevent or take action against activities that are, or may be, in violation of the Meraki End Customer Agreement, the Meraki Terms of Use, or applicable law; to tailor content and other aspects of your experience on and in connection with the Services; maintain a record of our dealings with you; for other administrative purposes; and for any other purposes that we may disclose to you at the point at which we request your Personal Information, and pursuant to your consent.

We may also use Personal Information you provide to contact you regarding products, services, and offers, both from ourselves and third parties, that we believe you may find of interest. We allow you to opt-out from receiving marketing communications from us as described in the "Choice" section below.

Disclosure of Information
Except as described in this Policy, we will not disclose your Personal Information that we collect on the Services to third parties without your consent. We may disclose information to third parties if you consent to us doing so, as well as in the following circumstances:

Service Providers
We may disclose Personal Information to third-party service providers (e.g., payment processing and data storage and processing facilities) that assist us in our work. We limit the Personal Information provided to these service providers to that which is reasonably necessary for them to perform their functions, and we require them to agree to maintain the confidentiality of such Personal Information.

Business Transfers
Information about our users, including Personal Information, may be disclosed and otherwise transferred to an acquirer, successor, or assignee as part of any merger, acquisition, debt financing, sale of company assets, or similar transaction, as well as in the event of an insolvency, bankruptcy, or receivership in which Personal Information is transferred to one or more third parties as one of our business assets. To Affiliated Companies
We may disclose Personal Information and other information to our parent company and to other corporate affiliates of ours. These affiliated third-party companies may use and disclose Personal Information and other information that we disclose to them in accordance with their privacy policies and procedures.

To Channel Partners
We may disclose Personal Information and other information to channel partners, such as resellers, of ours. These third parties may use such Personal Information and other information that we disclose to them for purposes such as marketing our products and services to you.
To Protect our Interests
We also may disclose Personal Information and other information if we believe that doing so is legally required or is in our interest to protect our property or other legal rights (including, but not limited to, enforcement of our agreements) or the rights or property of others, or otherwise to help protect the safety or security of our Services or other users of the Services.

Choices Regarding Promotional Communications
If you request access to your account including deletion requests on any other Party Services, you may unsubscribe at any time by following the instructions contained in the e-mail. You may also opt-out from receiving commercial e-mail from us, and any other promotional communications that we may send to you from time to time (e.g., by postal mail) by sending your request to us by e-mail at privacy@meraki.com or by writing to us at the address given at the end of this policy. Additionally, if we offer user account functionality on the Services, we may allow you to view and modify settings relating to the nature and frequency of promotional communications that you receive from us.

Please be aware that if you opt-out of receiving commercial e-mail from us, it may take up to ten business days for us to process your opt-out request, and you may receive commercial e-mail from us during that period. Additionally, even after you opt-out from receiving commercial messages from us, you will continue to receive administrative messages from us regarding our Services.

Your California Privacy Rights
You may choose to opt-out of the sharing of your personal information with third parties for their direct marketing purposes at any time by e-mailing us at opt-out@meraki.com. Once we receive your opt-out request, we will no longer disclose your Personal Information to third-parties for their direct marketing purposes. Please be aware that this opt-out does not prohibit disclosures of Personal Information or other information made for non-direct marketing purposes.

Access
If we offer the ability to create user accounts or profiles on our Services, you may have the ability to access and update certain categories of Personal Information that you provide to us by logging in to your account and accessing your account settings. If you wish to access, amend, or delete any other Personal Information we hold about you, you may contact us at privacy@meraki.com.

If you request access to your account including deletion requests on any of our Services (via a user settings page, by email, or otherwise) including requests to remove testimonials that contain Personal Information, we will respond to your access requests within 30 days. Please note that we may need to retain some of your Personal Information in order to satisfy our legal obligations, or where we reasonably believe that we have a legitimate reason to do so.

Please note that Meraki has no direct relationship with the individuals whose personal data we process on behalf of our customers. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct his or her query to our customer (the data controller). If the customer requests Meraki to remove the data, we will respond to their request within 30 days. We will retain personal data we process on behalf of our customers for as long as needed to provide services to our customer. Meraki will retain and use this personal information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

Links
The Services may contain links to other Web sites or other Third-Party Services that we do not own or operate. If you choose to visit or use any Third-Party Services or products or services available on or through such Third-Party Services, please be aware that this Policy will not apply to your activities or any information you disclose while using those Third-Party Services or any products or services available on or through such Third-Party Services. We are not responsible for the privacy practices of these Third-Party Services or any products or services on or through them. Additionally, the Services may contain links to Web sites and services that we operate but that are governed by different privacy policies. We encourage you to carefully review the privacy policies applicable to any Web site or service you visit other than the Services before providing any Personal Information on them.

Children
Children’s safety is important to us, and we encourage parents and guardians to take an active interest in the online activities of their children. Our Services are not directed to children under the age of 13, and we do not knowingly collect Personal Information from children under the age of 13 without obtaining parental consent. If we learn that we have collected Personal Information from a child under the age of 13 on our Services, we will delete that information as quickly as possible. If you believe that we may have collected any such Personal Information on our Services, please notify us at privacy@meraki.com.

International Visitors
Many of our servers and data centers are located in the United States. If you choose to use the Services from outside the U.S., then you should know that you may be transferring your Personal Information outside of your region and into the U.S. for storage and processing. By providing your Personal Information to us through your use of the Service, you agree to that transfer, storage, and processing in the U.S. Also, we may transfer your data from the U.S. to other countries or regions in connection with storage and processing of data, fulfilling your requests, and operating the Services. You should know that each region can have its own privacy and data security laws, some of which may be less stringent as compared to those of your own region.

Security
We use certain security measures in an effort to protect Personal Information from accidental loss, disclosure, misuse, and destruction. The security of your Personal Information and our customers’ information is important to us. When you enter sensitive information (such as login credentials) we encrypt the transmission of that information using secure socket layer technology (SSL). Please be aware, however, that no data security measures can be guaranteed to be completely effective. Consequently, we cannot ensure or warrant the security of any information that you provide to us. You transmit information to us at your own risk.

If Meraki learns of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. Meraki may post a notice through the Services if a security breach occurs. Depending on where you live, you may have a legal right to receive notice of a security breach in writing. To receive a free written notice of a security breach, you should notify us at privacy@meraki.com.
Attachment 4

Meraki Return Policy

**Warranty Returns**
If you are experiencing hardware issues, please contact Cisco Meraki support by signing in to dashboard (Help > File a Ticket) or by calling us. If you require advance replacement, please call Cisco Meraki technical support. Advance replacement orders will ship within 1 business day. Cisco Meraki stands behind its products. Hardware products come with either a one year or lifetime warranty, as specified on the relevant Cisco Meraki data sheet. To request a return materials authorization (RMA), please complete our RMA request form. If your RMA request is approved, Cisco Meraki will email you an RMA number and a return shipping label free of charge. We will ship replacement units within five business days of receiving your defective units. If no trouble is found, we will contact you before taking further action.

Additional information about Cisco Meraki’s hardware warranty can be found in *Cisco Meraki’s End Customer Agreement*.

**Free Trial Returns**
If you would like to return units from a free trial, please go to your free trial webpage (using the link your rep provided you with) and go to the returns tab to fill out the RMA request form. If your free trial hardware was shipped to the US, Canada, or an EU member country you will also be able to print a return shipping label and ship the product back to Cisco Meraki at no charge to you.

**Refund Requests**
If you are dissatisfied with your Cisco Meraki purchase for any reason, you may return your order for a full refund. All returns must meet the following criteria:

1. You purchased the product through an authorized Cisco Meraki reseller or direct from Cisco Meraki
2. You are the original purchaser of the product
3. You submit your refund request within 30 days of purchase
4. The product is in new condition, including all accessories in the original packaging

To request a refund, please complete our RMA request form. If your refund request is approved, Cisco Meraki will email you an RMA number. In order for the refund to be accepted and processed, Meraki must receive the hardware you are returning no later than 30 days following the date the RMA number is issued. Once we have received and inspected the units, we will process your return. If you purchased through a Cisco Meraki reseller, your refund will be issued by that reseller. If you purchased directly from Cisco Meraki, we will issue a refund, typically within 15 days of receiving the return. (If you paid by credit card we will credit the original credit card. If you paid by any other method, we will send you a check.)

From time to time Cisco Meraki offers special refund terms. If your return is covered by special terms, please reference those terms on your RMA request.

Please contact Cisco Meraki directly for all returns, including product purchased through distributors or resellers.

**Shipment Preparation**

- Please return units in their entirety. That is, include all power supplies, antennas, and other components along with the original product box.
- Please use the original shipping carton and packaging material. If this is not possible, use another shipping carton with padding to protect the units from damage during shipping. DO NOT ship a product without a carton.
- The customer will be charged for product that is damaged due to insufficient packaging.
- Once you have received your RMA number from Cisco Meraki via email, write this RMA number in large letters on the exterior of the shipping carton. Shipments to Cisco Meraki without an RMA approval will not be processed.
- If Cisco Meraki approves your RMA request, you will receive a confirmation email containing an RMA number within two business days. The address to which the product should be sent will also be included in that email.
- Cisco Meraki will pay for warranty replacement return shipments and free trial return shipments from the US and Canada. For all other returns it is your responsibility to pay for return shipping back to Cisco Meraki using the carrier of your choice. Cisco Meraki recommends that the return package has a tracking number and is insured for the proper value of its contents. Cisco Meraki is not responsible for packages lost by carriers.
Attachment 5

This document describes Cisco's Software Application. All capitalized terms in this description have the meaning ascribed to them in the Glossary of Terms. Direct Sale from Cisco. If you have purchased these Services directly from Cisco, this document is incorporated into your Master Services Agreement (MSA) with Cisco. In the event of a conflict between this Service Description and your MSA, this Service Description shall govern.

Sale via Cisco-Authorized Reseller. If you have purchased these Services through a Cisco-Authorized Reseller, this document is for description purposes only; it is not a contract between you and Cisco. The contract, if any, governing the provision of this Service will be the one between you and your Cisco Authorized Reseller.

SAS

Cisco Responsibilities:

• Cisco Technical Assistance Center (TAC) access 24 hours per day, 7 days per week to assist by telephone, fax, electronic mail or the internet with Application Software use, configuration and troubleshooting issues. Cisco will respond within one Business Hours and (1) hour for all calls received during Standard Business Hours. For Severity 1 and 2 calls received outside Standard Business Hours. For Severity 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next Business Day.

• Manage problems according to the Cisco Severity and Escalation Guideline.

• Access to Cisco.com. This system provides Customer with helpful technical and general information on Cisco Products as well as access to Cisco's on-line Software Center library. Please note that access restrictions identified by Cisco from time to time may apply.

• Work-around solutions or patches to reported Application Software problems using reasonable commercial efforts. For an Application Software patch, a Maintenance Release for the Application Software experiencing the problem will be provided as follows: (a) download from Cisco.com (as available), or (b) shipment of Application Software on media such as CDROM using a nominated carrier. Requests for alternative carriers will be at Customer’s expense.

• Minor and Maintenance Releases. The Application Software releases and supporting Documentation are available on the Cisco.com Software Center (www.cisco.com/sofware) or on media such as CDROM, through the Cisco Product Upgrade Tool (PUT) (www.cisco.com/upgrade). Applicable supporting Documentation, if available, is on Cisco.com and is limited to one copy per release. Additional copies may be purchased.

SASU

Cisco Responsibilities:

• Cisco-provided deliverables, as specified above in SAS.

• Cisco-provided, on request, Major Application Software Releases. Such Updates are limited to Application Software releases that have been validly licensed and paid for and that are covered under a current SASU contract. The Application Software releases and supporting Documentation will be made available on the Cisco.com Software Center (www.cisco.com/sofware) or on media such as CDROM, through the Cisco PUT (www.cisco.com/upgrade). Applicable supporting Documentation, if available, is available on Cisco.com and is limited to one copy per licensed Software. Additional copies may be purchased.

Customer Responsibilities:

The provision of the Service options assumes that Customer will:

• Provide a severity level as described in the Cisco Severity and Escalation Guideline for all the calls Customer places.

• Provide, at Customer’s expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Cisco TAC engineer and systems passwords so that problems may be diagnosed and, where possible, corrected remotely.

• Provide thirty (30) days Notice to Cisco of any requested addition(s) to your Equipment List.

• Notify Cisco, using Cisco.com, of Product on the Equipment List which Customer has moved to a new location within thirty (30) days of such relocation. Please be aware that the Services will be provided to Customer beginning thirty (30) days after receipt of your notification. Cisco will also need Customer to notify Cisco of any modification to the Product and configuration including upgrades or changes to FRUs not in the original configuration within five (5) days of such modification.

• Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.

• Provide valid and applicable serial numbers for all Product problems and issues reported to Cisco or where Customer is seeking information from Cisco in connection with Product use. Cisco may also require Customer to provide additional information in the form of location of the Product, city location details and zip code information.

• When requested, provide Cisco with a list of all personnel that Customer has authorized to contact Cisco or access Cisco.com for Services and to download Software from Cisco.com or ordered via Cisco’s PUT. Customer is responsible for reviewing the list on an annual basis and adding or removing personnel as necessary.

• Verify any in-transit damage of the media for the SAS or SASU Application Software Updates.

• Update to the latest Application Software release and latest third-party Software release, if required by Cisco to correct a reported Application Software problem.

• Pay all engineering time, travel, and out-of-pocket expenses if Customer request performance of onsite Services or Services outside the scope of Service options described in this document.

• Provide any Hardware required to perform fault isolation.

• Receive Services on Cisco Application Software for which Customer has:

  • Purchased a valid and current license for the latest Major and Minor release or is renewing support for a valid supported license revision.

  • Make all reasonable efforts to isolate the Application Software problem prior to requesting support from Cisco.

• Acquire, install, configure and provide technical support for all:

  • Third-party Products, including upgrades required by Cisco or related Services; and
  • Network infrastructure, including, but not limited to, local and wide-area data Networks and equipment required by Cisco for operation of Application Software.

• Maintain Customer’s entire Application Software implementation for configurable Application Software currently in use under the same Service option for Cisco to provide Services for any portion of Customer’s Application Software implementation.
Cisco Online Privacy Statement
Cisco Systems, Inc. and its subsidiaries (collectively "Cisco") are committed to protecting your privacy and ensuring you have a positive experience on our websites and in using our products and services ("Solution" or "Solutions"). This Privacy Statement applies to Cisco websites that link to this Statement but does not apply to those Cisco websites that have their own privacy statement. Our personal information handling practices are described below, in the supplements on the right, and in notices at the point of collection.

TRUSTe Certification
Cisco Systems, Inc. has been awarded TRUSTe's Privacy Seal signifying that this privacy policy and practices have been reviewed by TRUSTe for compliance with TRUSTe's program requirements, including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program only covers information that is collected through the websites www.cisco.com, www.webex.com, and www.theflip.com, and does not cover information that may be collected through any software downloaded from these websites.

TRUSTe's mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trustmark and innovative trust solutions. If you have questions or complaints regarding our privacy policy or practices, please contact us at privacy@cisco.com. If you are not satisfied with our response, you can contact TRUSTe here.

Cisco complies with the U.S. - E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Cisco has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view Cisco’s certification, please visit http://www.export.gov/safeharbor/

Collection of Your Personal Information
We will inform you of the purpose for collecting personal information when we collect it from you and keep it to fulfill the purposes for which it was collected, as required by applicable laws or for legitimate purposes. "Personal Information" is any information that can be used to identify an individual, and may include name, address, email address, phone number or payment card number. We collect Personal Information (and engage third parties to collect Personal Information to assist us) for a variety of reasons, such as processing your order, providing you with a newsletter subscription, enabling the use of certain features of our Solutions, personalizing your experience, managing a job application, or during the testing admissions process when a computer based certification test is administered to you (for more information about online testing, [http://pearsonvue.com/Cisco]). We and the third parties we engage may combine the information we collect from you over time and across our websites with information obtained from other sources to help us improve its accuracy and completeness, and to help us better tailor our interactions with you.

If you choose to provide third party Personal Information (such as name, email and phone number), we will assume that you have the third party's permission to provide us the information. Examples include forwarding reference material to a friend or job referrals. This information will not be used for any other purpose.

In some instances, Cisco may collect non-personal (aggregate or demographic) data through cookies, web logs, web beacons and other similar applications. This information is used to better understand and improve the usability, performance, and effectiveness of the website. Please read the "Cookies" section below for more information. In addition, by using some of our Solutions, anonymous network information may be transmitted to us such as the performance of the Solution and types of devices attached to the network. With this information we can determine how users are interacting with the Solution, to assist us with improving it, to manage your network, and to provide alerts via the Solution of available software updates/upgrades.

Uses of Your Personal Information
We will only use your Personal Information in the way we specified when it was collected. We will not subsequently change the way your Personal Information is used without first asking for your permission. Some of the ways we may use Personal Information include to deliver a Solution that you have requested, support our Solutions, contact you for customer satisfaction surveys, personalize websites and newsletters to your preferences, administer and process your certification exams, or communicate for marketing purposes. You can edit your preferences at any time (see Your Choices and Selecting Your Communication Preferences below).

Access to and Accuracy of Your Personal Information
We need your help in keeping your Personal Information accurate and up to date so please notify us of any changes to your Personal Information. To update your Personal Information and communication preferences, you can contact privacy@cisco.com. In addition, you may have the ability to view or edit your personal information online, including:

- Cisco.com – You can access and update your profile using the Cisco Profile Management Tool. You may also make these updates or request deactivation of your website profile by sending an email to web-help@cisco.com.
- Home.cisco.com (formerly Linksysbycisco.com) – You can access and update your profile by signing into your Online Account at http://home.cisco.com/. You may also make these updates or request deactivation of your website profile by sending an email to privacy@linksys.com.
- Webex.com - You can access and update your profile by signing into your user online account at http://try.webex.com/mk/get/profile. You may also make these updates or request deactivation of your website profile by sending an email to privacy@webex.com.
- TheFlip.com - You can access and update your profile by signing into your user online account at http://puredigital2.custhelp.com/cgibin/puredigital2.cfg/php/enduser/ask.php. You may also make these updates or request deactivation of your website profile by sending an email to remove@theflip.com.

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Attachment 10

VMware End User License Agreement
Effective August 27, 2012, VMware is eliminating the vRAM restriction on licenses to VMware vSphere. The removal of the vRAM limit from VMware vSphere licenses applies retroactively to any past and existing users of VMware vSphere, in addition to any new users of VMware vSphere. This new policy replaces and supersedes any conflicting terms in any license agreement previously agreed upon between VMware and any licensee of VMware vSphere. This change does not apply to VMware vSphere users under the VMware Service Provider Program.

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

IMPORTANT-READ CAREFULLY: BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU (THE INDIVIDUAL OR LEGAL ENTITY) AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA"). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

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1. DEFINITIONS.

1.1 “Affiliate” means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here “control” means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2 “Documentation” means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

1.3 “Guest Operating Systems” means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

1.4 “Intellectual Property Rights” means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5 “License” means a license granted under Section 2.1 (General License Grant).

1.6 “License Key” means a serial number that enables You to activate and use the Software.

1.7 “License Term” means the duration of a License as specified in the Order.

1.8 “License Type” means the type of License applicable to the Software, as more fully described in the Order.

1.9 “Open Source Software” or “OSS” means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file (or similar file) provided within the Software or at www.vmware.com/download/open_source.html.

1.10 “Order” means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).

1.11 “Product Guide” means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at www.vmware.com/download/eula.

1.12 “Support Services Terms” means VMware’s then-current support policies, copies of which are posted at www.vmware.com/support/policies.

1.13 “Software” means the VMware Tools and the VMware computer programs listed on VMware’s commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

1.14 “Territory” means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

1.15 “Third Party Agent” means a third party delivering information technology services to You pursuant to a written contract with You.

1.16 “Virtual Machine” means a software container that can run its own operating system and execute applications like a physical machine.
1.17 “VMware” means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.

1.18 “VMware Tools” means the suite of utilities and drivers, Licensed by VMware under the “VMware Tools” name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

2. LICENSE GRANT.

2.1 General License Grant. VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

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2.4 Benchmarking. You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware’s Workstation or Fusion products, only if You provide a copy of Your study to benchmark@vmware.com prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at benchmark@vmware.com to request such review and approval) prior to such publication and distribution.

2.5 VMware Tools. You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.

2.6 Open Source Software. Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS’s own applicable license terms, which can be found in the open_source_licenses.txt file, the Documentation or as applicable, the corresponding source files for the Software available at www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the “Source Files”), You may obtain a copy of the applicable Source Files from VMware’s website at www.vmware.com/download/open_source.html by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

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4. ORDER. Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.

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8.1 Defense and Indemnification. Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

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9.2 Further Limitations. VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

10. TERMINATION.

10.1 EULA Term. The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

10.2 Termination for Breach. VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware’s written notice thereof.

10.3 Termination for Insolvency. VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

10.4 Effect of Termination. Upon VMware’s termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

11. CONFIDENTIAL INFORMATION.

11.1 Definition. “Confidential Information” means information or materials provided by one party (“Discloser”) to the other party (“Recipient”) which are in tangible form and labelled “confidential” or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware’s pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

11.2 Protection. Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties’ ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient’s duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

11.3 Exceptions. Recipient’s obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser’s Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser’s request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4 Data Privacy. You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to

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other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data, VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

12. GENERAL.

12.1 Transfers; Assignment. Except to the extent transfer may not legally be restricted or as permitted by VMware’s transfer and assignment policies, in all cases following the process set forth at [VMware.com Support Policies/Licensing Policies](https://www.vmware.com/support/policies/licensingpolicies.html), You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware’s prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to you, provided that VMware remains responsible to You for the performance of the services.

12.2 Notices. Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

12.3 Waiver. Failure to enforce a provision of this EULA will not constitute a waiver.

12.4 Severability. If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

12.5 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

12.6 Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word ‘including’ means “including but not limited to”.

12.7 Governing Law. This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

12.8 Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.9 Order of Precedence. In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

12.10 Entire Agreement. This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

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(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Cisco WebEx, LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1489 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Office in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the...
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such a claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it co...

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
WebEx Terms and Conditions

1. **WebEx Services.** These WebEx Terms and Conditions (“Agreement”) govern the use by the Subscriber of any services (the “Services”) ordered by Subscriber from WebEx and set forth in one or more Order Forms. “Services” in this Agreement does not refer to or include any professional services. Professional services ordered by Subscriber, if any, will be as set forth in a statement of work governed by separate terms and conditions.

2. **Order Forms.** An “Order Form” is a form signed by Subscriber that identifies the type and quantity of Services being ordered and the associated fees. The Order Form includes a link to the Service Description(s). An Order Form is effective only when signed by Subscriber and either signed or provisioned by WebEx. Subscriber may be required to provide information in order to register for and/or use certain Services. Subscriber warrants that all such information is accurate.

3. **Changes to Services.** WebEx may, at its sole discretion and from time to time, enhance and/or expand the features of a Service at no additional cost to Subscriber. WebEx may also, at its sole discretion and from time to time, make available additional features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost (“Cost Feature”). If Subscriber elects to add a Cost Feature, it may do so by contacting its local WebEx sales representative or WebEx directly at http://www.webex.com/go/contact_sales in order to receive a quote for the Cost Feature. Further, WebEx may elect to discontinue the availability of a Service, provided that such discontinuance will be effective no earlier than expiration of the then-current Initial or Renewal Term as specified in the applicable Order Form. Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback that Subscriber provides to WebEx without payment of compensation to Subscriber.

4. **Beta Services.** WebEx may, at its sole discretion, make available to Subscriber a “beta” version of any of the Services (the “Beta Services”) for purposes of evaluation and feedback. Subscriber acknowledges that the Beta Service(s) Subscriber is evaluating may contain bugs, errors and other problems and is provided to Subscriber “AS-IS.” WebEx disclaims any warranty or liability obligations to Subscriber of any kind with respect to the Beta Services. Subscriber further acknowledges the importance of communication between WebEx and Subscriber during WebEx’s use of the Beta Services and hereby agrees to receive related correspondence and updates from WebEx. In the event Subscriber requests to opt-out from such communications, Subscriber’s participation in the Beta Services will also be canceled. Subscriber also hereby acknowledges that WebEx has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that WebEx has no express or implied obligation to Subscriber to announce or introduce the Beta Services. During the WebEx Beta program, Subscriber will be asked to provide feedback regarding Subscriber’s use of the Beta Service(s). Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback (including, but not limited to, feedback on any Beta Services) that Subscriber provides to WebEx without payment of compensation to Subscriber. WebEx may suspend or terminate access to Beta Services (and delete any Content or data provided to WebEx with respect to such Beta Service(s)) at any time, without notice and without any liability to Subscriber.

5. **Fee Adjustments.** WebEx may, upon at least forty-five (45) days prior written notice and effective at the end of the then-current Initial or Renewal Term, adjust the fees paid by Subscriber for the Services, provided that Subscriber shall have the option, within thirty (30) days of receiving such notice from WebEx, to either (i) modify the quantity or type of Services utilized by Subscriber by a mutual written amendment between the parties, or (ii) terminate the affected Order Forms upon written notice, either of which will become effective at the end of the then current Initial or Renewal Term.

6. **WebEx Training and Support.** Online training and online support will be provided by WebEx at no additional cost, and is specified in the service descriptions included on the applicable Order Form.

7. **Payment.** Subscriber will pay invoices for the Services when due, and in accordance with the Payment Terms set forth on the Order Form. WebEx reserves the right to charge interest at the lower of 1.5% per month or the highest rate permitted by law on any monthly payment (not being reasonably disputed by Subscriber) that is not received when due. Subscriber must notify WebEx in writing of any disputed fees within fifteen (15) days of the invoice date. WebEx may suspend the Services ten (10) business days following WebEx’s written notice to Subscriber that Subscriber’s payment of undisputed fees is ten (10) or more business days delinquent. Additionally, WebEx is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due. Subscriber shall pay all taxes (exclusive of taxes based on the net income of WebEx), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components provided by WebEx to Subscriber.

8. **Term and Termination.**
   a. **Term and Termination of Order Forms.** The “Initial Term” of an Order Form will be for the number of months set forth on the Order Form, commencing on the date the Service is available for use by Subscriber. Each “Renewal Term” will begin at the end of the preceding (Initial or Renewal) Term and continue as set forth on the Order Form. Either party may terminate any Order Form at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such term.
   b. **Term and Termination of Agreement.** This Agreement will commence on the date Subscriber signs its first Order Form and may be terminated by written notice effective upon the termination of all of Subscriber’s Order Forms. Each party may terminate any Order Form(s) and/or this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within thirty (30) days after written notice thereof from the terminating party.
   c. **Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: Sections 7 and any payment provisions set forth in the Order Form (as to amounts due and owing as of this Agreement’s expiration or termination date), 9, 10, 11, and 12. Upon any termination of this Agreement, Subscriber must cease any further use of the Services and destroy any copies of associated software within its possession and control (to the extent not prohibited by applicable law).

9. **Subscriber Responsibilities.**
a. Account Number/Password. Except when Subscriber’s account number/password is obtained by a third party as a result of a material breach of WebEx’s physical or computer system security arising from circumstances within WebEx’s control, Subscriber agrees that Subscriber is solely responsible for the confidentiality of Subscriber’s username, account number and passwords and solely responsible for any unauthorized use. Subscriber agrees to immediately notify WebEx of any unauthorized use of Subscriber’s account of which Subscriber becomes aware.

b. Content. Except when Subscriber’s account is accessed by a third party as a result of a material breach of WebEx’s physical or computer system security arising from circumstances within WebEx’s control, Subscriber agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings, and any other material ("Content") displayed, posted, uploaded, stored, exchanged or transmitted on or through the Service. Under no circumstances will WebEx be liable to Subscriber for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content. Subscriber understands and agrees that by displaying, posting, uploading, storing, exchanging or transmitting Content while using the Services or otherwise providing Content to a WebEx website or space (“Site”), Subscriber automatically grants (and warrants and represents it has a right to grant) to WebEx, solely for the purpose of offering the Sites and/or the Services to Subscriber, a world-wide, royalty-free, sublicensable (so WebEx affiliates, contractors, resellers and partners can deliver the Services) license to use, modify, publicly perform, publicly display, reproduce and distribute the Content, during the course of this Agreement and any delivery of Services. If at any time Subscriber objects to any material on a Site, Subscriber’s sole remedy is to cease using it (to the extent not prohibited by applicable law). WebEx does not endorse and has no control over what Subscribers or other users of the Service ("Users") post or submit to a Site. Subscriber shall contact WebEx Customer Support at 866-229-3239 if Subscriber becomes aware of misuse of the Services by any person. WebEx cannot guarantee the accuracy of any information submitted by any User or Content, nor any identity information about any User. WebEx may without notice or liability investigate any complaints and violations or suspected violations of this Agreement that come to its attention and may take any action that it believes is appropriate, including, but not limited to, to rejecting, refusing to post or removing any profile, posting Content, or other data, or restricting, suspending, or terminating Subscriber or any User's access to a Site or Services. However, because situations and interpretations vary, WebEx also reserves the right not to take any action.

c. Communications. Subscriber agrees that Subscriber will not use the Services to send unsolicited email outside Subscriber’s company or organization (e.g., “spam”) in violation of applicable law, falsify any email header information when sending emails (e.g., “spoofing”), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., “phishing”). Subscriber further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation. Subscriber agrees to indemnify, defend and hold harmless WebEx from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys’ fees) arising from Subscriber’s violation of this Section 9.

d. Privacy. Subscriber acknowledges and agrees that WebEx acts as a passive conduit and it will not monitor or disclose Content, except as needed to provide the Services, as instructed by Subscriber, or as otherwise required by law. Use of the Sites and the Services constitutes consent by Subscriber to WebEx’s and/or its affiliates’ collection and use of such information and, for European Economic Area (EEA) customers, to the transfer of such information to a location outside the EEA, as well as to other countries deemed to have adequate data protection laws. Use of Sites and/or Services is also subject to the Cisco Systems, Inc. Terms of Use located at http://www.cisco.com/web/sites/assets/legal/privacy.html, which is incorporated into this Agreement by reference. The foregoing notwithstanding, WebEx may contact Subscriber via e-mail or otherwise with information relevant to Subscriber’s use of the Services and payment obligations, if any, regardless of whether Subscriber has opted out of receiving such notices. Subscriber also agrees to have Subscriber’s name and/or email address listed in the header of certain communications Subscriber initiates through the Services.

10. Warranty Disclaimer. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, SITES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED “AS IS” AND “AS AVAILABLE.” TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, MAKE NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE SERVICES OR THE SITES, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. Without limiting the foregoing, the Services are not designed or licensed for use in environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems, and WebEx, its suppliers, resellers and affiliates, specifically disclaim any express or implied warranty of fitness for such purposes.

11. Limitation of Liability. IN NO EVENT WILL WEBEX, OR ITS SUPPLIERS, RESELLERS OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, THE SITE(S) OR ASSOCIATED SOFTWARE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF WEBEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, WEBEX’S (AND ITS SUPPLIERS’, RESELLERS’ AND AFFILIATES’) MAXIMUM CUMULATIVE LIABILITY AND SUBSCRIBER’S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER, IF ANY, FOR THE SUBSCRIPTION SERVICE FEES IN THE PREVIOUS TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to Subscriber.


a. Proprietary Rights. Excluding Subscriber Marks and Content, WebEx and/or its suppliers, as applicable, retain ownership of all proprietary rights in the Services and Sites and in all trade names, trademarks, service marks, logos, and domain names (“WebEx Marks”) associated or displayed with the Services. Subscriber may not frame or utilize framing techniques to enclose any WebEx Marks, or other proprietary information (including
images, text, page layout, or form) of WebEx without WebEx's express written consent. Subscriber may not use any meta tags or any other "hidden text" utilizing WebEx Marks without WebEx's express written consent.

b. **Use of Subscriber's Name and Logo.** Subscriber agrees that WebEx may use Subscriber's name, logo and other trademarks or service marks of Subscriber (collectively "Subscriber's Trademarks") to create a co-branded Services website as part of delivery of the Services. Nothing in this Agreement transfers to WebEx any right, title or interest in or to the Subscriber's Trademarks, and all goodwill arising from use of the Subscriber's Trademarks will inure to the Subscriber's benefit.

c. **Copyright Policy.** Subscriber retains copyright and any other rights it already holds in Content which Subscriber submits, stores, posts or displays on or through, the Services. Subscriber may not post, store, modify, distribute, or reproduce in any way copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. WebEx may deny access to the Sites or the Services to any User who is alleged to infringe another party's copyright. If Subscriber believes that WebEx or any of its affiliates or any user of WebEx has violated a copyright, please contact us at: DMCAgent@cisco.com for details on how to properly notify us of a potential copyright infringement or other intellectual property rights issue. In the event Subscriber's content is removed pursuant to this process, Subscriber will receive information on how to file a counter-notification. Notices and counter-notices are legal notices distinct from regular Service activities or communications. As such, they are not subject to WebEx's Privacy Policy. This means WebEx may publish or share them with third parties at WebEx's discretion, and WebEx may produce them pursuant to a legal discovery request.

d. **Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and WebEx may assign its rights and delegate its obligations in whole or in part to an affiliate. Either party may terminate this Agreement upon ten (10) days notice, if the assignee can be reasonably considered a competitor of the non-assigning party.

e. **Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. This Agreement, including all Attachments and Service-specific Supplemental Terms (if any), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. However, WebEx and Subscriber shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's or WebEx's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both Subscriber and WebEx.

f. **Force Majeure.** Neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

g. **Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will stricken and the remainder of this Agreement will continue in full force and effect.

h. **Use of the Services.** Subscriber may use the Services only as permitted under the terms and conditions of this Agreement or other written agreements between Subscriber and WebEx. Subscriber will not resell, distribute, use on a timeshare or service bureau basis, or otherwise directly or indirectly generate income from the Services. Subscriber will not modify, make derivative works of, disassemble, decompile or reverse engineer the Sites, Services or any component thereof (except to the extent expressly permitted by law). For meeting Services, Subscriber may use the Services only for sessions or meetings in which an active participant.

i. **Software.** Subscriber may be required to download and install WebEx software ("Software"). In that event, WebEx agrees to provide Subscriber with a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use the Software in accordance to the terms of this Agreement. Subscriber may not use the Software for anything other than as intended by WebEx in connection with Subscriber's use of the Services. Subscriber may not use the Software with any device, program or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by copyright laws. All rights not expressly granted by WebEx are hereby reserved. Subscriber agrees not to take any action to interfere with WebEx's or its supplier's ownership of or rights in the Software. Subscriber agree that, unless otherwise permitted in this license or by law, Subscriber will not: (i) reproduce, republish, display, frame, download, distribute, or transmit the Software; (ii) to the extent permitted under applicable law redistribute, encumber, sell, rent, lease, loan, sublicense, assign, or otherwise transfer rights to the Software; (iii) modify or create any derivative works based on the Software, including customization, translation, or localization; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any software or files, or parts thereof, included as part of the Software; (v) except to the extent expressly permitted by law, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Software, or the underlying ideas or algorithms of the Software; (vi) create or use any software other than as authorized by WebEx to access the Software; (vii) attempt to gain unauthorized access to the Software or to any account, application, platform, computer system or network associated with the Software; (viii) use the Software in any way that violates this Agreement, or any other agreements between Subscriber and WebEx or its affiliates, or any law; and (ix) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or associated with the Services.

j. **Legal Compliance.** Subscriber agrees that Subscriber will comply with all applicable laws and regulations in connection with Subscriber's use of the Services, including, but not limited to: (a) with respect to personally identifiable information sent or received by Subscriber, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of Subscriber to ensure it has the right to use all features of the Services in Subscriber's jurisdiction. WebEx may modify or not make available Services or Service features to comply with applicable laws and regulations. Subscriber represents that Subscriber is not an individual less
than 18 years of age, or an emancipated minor, or over the age of 13 and possess legal parental or guardian consent to register for and use the Sites and Services. WebEx products, technology and the Services are subject to U.S. and local export control laws and regulations. Subscriber shall comply with such laws and regulations governing use, export, reexport, and transfer of products, technology and Services and will obtain all required U.S. and local authorizations, permits, or licenses. Subscriber certifies that Subscriber and any third parties Subscriber invites will not use the Service from within an embargoed country. Subscriber certifies that they are not on the U.S. Department of Commerce’s Denied Persons List or affiliated lists, on the U.S. Department of Treasury’s Specially Designated Nationals List or on any U.S. Government export exclusion lists. The export obligations under this clause shall survive the expiration or termination of this Agreement.

k. **Governing Law.** Subscriber’s use of the Services is subject to Subscriber entering into the Agreement with the WebEx entity specified below based on where Subscriber or its business is located. Choice of law and the location for resolving disputes with such WebEx entity for Subscriber’s region/country is also specified below. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under those applicable laws.

i. For North America and South America, the WebEx entity is Cisco WebEx LLC. The websites for this region are webex.com (US and Canada), webex.com.mx (for Latin America) and webex.com.br (for Brazil). Governing law for this region is the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal courts of California shall have exclusive jurisdiction over any claim.

ii. For Europe, Africa and the Middle East, the following shall apply. For the United Kingdom, the WebEx entity is WebEx Communications UK, Ltd. and the website is webex.co.uk. For France, the WebEx entity is WebEx Communications France SARL and the website is webex.co.fr. For Germany, the WebEx entity is WebEx Communications Deutschland GmbH and the website is webex.co.de. For the rest of Europe, Africa and the Middle East, the WebEx entity is WebEx Communications B.V. and the websites vary by location, please check webex.com for links to specific local country websites, including webex.es (for Spain). Governing law for these regions/countries is the laws of England. The English Courts shall have exclusive jurisdiction over any claim arising under this Agreement. No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.

iii. For Japan, the WebEx entity is WebEx Communications Japan, K.K. The website for Japan is webex.co.jp. Governing law is the laws of Japan. The Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement. iv. For Australia, New Zealand, Oceania, China, India and the rest of Asia, the following shall apply. For Australia, New Zealand and Oceania, the WebEx entity is WebEx Australia Pty Ltd. and the website is webex.com.au. For India, the WebEx entity is WebEx Communications India Private Limited and the website is webex.co.in. For China, the WebEx entity is WebEx (China) Software Ltd. Co. and the website is webex.com.cn. For the rest of Asia, the WebEx entity is WebEx Asia Limited and the websites include webex.com.hk (for Hong Kong) and webex.co.kr (for South Korea). Governing law for these regions/countries is the laws of the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement.

v. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of intellectual property rights. vi. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Citrix Systems, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1982 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All and terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it co

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited right to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CITRIX SYSTEMS, INC.**

1. **GRANT OF LICENSE.** This PRODUCT contains software that provides services on a computer called a server (“Server Software”) and contains software that allows a computer to access or utilize the services provided by the Server Software (“Client Software”). This PRODUCT is licensed under a concurrent user, user, or device model. For purposes of this license, i) “ Concurrent User” is single client device connected to the Server.
Software; ii) "User" is an individual authorized by Ordering Activity to use any device(s) to access instances of the Server Software through Ordering Activity's assignment of a single user ID, regardless of whether or not the individual is using the PRODUCT at any given time; and iii) a "Device" is a device authorized by Ordering Activity to be used by any individual(s) to access instances of the Server Software (locally or over a network) through Ordering Activity's assignment of the device identity to a Device log, regardless of whether or not the device is being used at any given time. Server Software is activated by licenses that allow use of the Server Software in increments defined by the license model ("Licenses"). Under this license model, Ordering Activity may develop and market new or different computer programs or editions of the Software; iii) "Device" is a device authorized by Ordering Activity to be used by any individual(s) to access instances of the Server Software (locally or over a network) through Ordering Activity's assignment of the device identity to a Device log, regardless of whether or not the device is being used at any given time. Server Software is activated by licenses that allow use of the Server Software in increments defined by the license model ("Licenses"). Under this license model, Ordering Activity may develop and market new or different computer programs or editions of the Software.

Ordering Activity acknowledge that CONTRACTOR may develop and market new or different computer programs or editions of the Software. Unused Incidents and other entitlements expire at the end of each annual term. An Incident may require multiple telephone calls and offline research to achieve final resolution. The management of the issue will occur only if the issue is reproducible and severe. A, an Update shall mean a generally available release of the same SOFTWARE. To extend an Annual License, Ordering Activity must acquire and assign a License to each User or Device that accesses Ordering Activity's instances of the Server Software directly or indirectly, frequently or infrequently. Client Software is not activated by Licenses but will not operate in conjunction with the Server Software without the Server Software being activated. Licenses for other CITRIX PRODUCTS or other editions of the same PRODUCT may not be used to increase the allowable use for the PRODUCT. Licenses are version specific for the PRODUCT. They must be the same version or later than the Server Software being accessed. CONTRACTOR grants to Ordering Activity the following worldwide, non-exclusive rights to the Server Software and Client Software and accompanying documentation (collectively called the "SOFTWARE"):

a. Server Software. Ordering Activity may install and use the Server Software on one or more computers ("Server(s)"). Each License may be installed and used on a single license server within Ordering Activity's production environment and a single license server within Ordering Activity's disaster recovery environment. The Server Software may be used only to support up to the allowable number of Concurrent Users, Users or Devices based on Ordering Activity's total purchases of Licenses. Ordering Activity may use the Server Software to provide application services to third parties ("Hosting"). Each License that is installed in both a production and disaster recovery environment may be used only in one of the environments at any one time, except for duplicate use during routine testing of the disaster recovery environment. If Ordering Activity purchased the Enterprise or Platinum editions of this PRODUCT, each License may be used only to support use of any one or more of the edition features for the same Concurrent User, User or Device. Ordering Activity's use of Application Streaming to include with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users Ordering Activity's use of EasyCall voice services included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of Profile management included with XenApp Enterprise or Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise and Platinum Edition applications, and not other users. Ordering Activity's use of Provisioning services included with the XenApp Edition is limited to provisioning the XenApp Edition workload. Ordering Activity's use of Single Sign-On with XenApp Enterprise Edition is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise hosted applications, and not other users. If multiple Licenses are delivered for the various features of the edition, they should be treated as a single License. If Ordering Activity received this PRODUCT as a component of XenDesktop Enterprise or Platinum Edition, the Server Software may be used either to provide presentation services to physical or virtual machines running in the XenDesktop environment or directly to client devices.

b. Client Software. Under the Concurrent User or User model, the Client Software may be installed and used on an unlimited number of client devices. Under the Device Model, the Client Software may be installed and used only on Devices. Ordering Activity may use Client Software only to access instances of the Server Software.

c. Perpetual License. If the SOFTWARE is "Perpetual License SOFTWARE," the SOFTWARE is licensed on a perpetual basis and includes the right to receive Subscription Advantage (as defined in Section 2 below).

d. Annual License. If the SOFTWARE is "Annual License SOFTWARE," Ordering Activity's license is for one (1) year and includes the right to receive Updates for that period (but not under Subscription Advantage as defined in Section 2 below). For the purposes of this ATTACHMENT A, an Update shall mean a generally available release of the same SOFTWARE. To extend an Annual License, Ordering Activity must purchase and install an additional Annual License prior to the expiration of the current Annual License. Note that if a new Annual License is not purchased and installed, Annual SOFTWARE disables itself upon the expiration of the then-current Annual License period.

e. Archive Copy. Ordering Activity may make one (1) copy of the SOFTWARE in machine-readable form solely for backup purposes, provided that Ordering Activity reproduce all proprietary notices on the copy.

2. SUBSCRIPTION RIGHTS. Ordering Activity's subscription for the SOFTWARE ("Subscription") shall begin on the date the Licenses are delivered to Ordering Activity by email. Should Licenses be delivered to Ordering Activity on a tangible license card, Subscription shall instead begin on the date Ordering Activity request that the Licenses be allocated to Ordering Activity through mycitrix.com. Subscription shall continue for a one (1) year term subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the initial or a renewal Subscription Term, CONTRACTOR may, from time to time, generally make Updates available for licensing to the public. Upon general availability of Updates during the Subscription Term, CONTRACTOR shall provide Ordering Activity with Updates for covered Licenses. Any such Updates so delivered to Ordering Activity shall be considered SOFTWARE under the terms of this ATTACHMENT A, except they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. Subscription Advantage may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledge that CONTRACTOR may develop and market new or different computer programs or editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the functions performed by the Server Software. Ordering Activity may develop and market new or different computer programs or editions of the SOFTWARE. Unused Incidents and other entitlements expire at the end of each annual term. An Incident may require multiple telephone calls and offline research to achieve final resolution. The management of the issue will occur only if the issue is reproducible and severe. A, an Update shall mean a generally available release of the same SOFTWARE. To extend an Annual License, Ordering Activity must purchase and install an additional Annual License prior to the expiration of the current Annual License. Note that if a new Annual License is not purchased and installed, Annual SOFTWARE disables itself upon the expiration of the then-current Annual License period.

Ordering Activity acknowledge that CONTRACTOR may develop and market new or different computer programs or editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the functions performed by the SOFTWARE. Nothing contained in this ATTACHMENT A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that CONTRACTOR is not obligated under this ATTACHMENT A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works CITRIX (Incoterms 2000).

3. SUPPORT. Ordering Activity may buy SUPPORT for the SOFTWARE. SUPPORT shall begin on the date of SUPPORT activation by CONTRACTOR THROUGH CITRIX and shall run for a one (1) year term subject to Ordering Activity's purchase of annual renewals. SUPPORT is sold including various combinations of Incidents, technical contacts, coverage hours, geographic coverage areas, technical relationship management coverage and infrastructure assessment options. An "Incident" is defined as a single SUPPORT issue and reasonable effort(s) needed to resolve it. An Incident may require multiple telephone calls and offline research to achieve final resolution. The Incident severity will determine the response levels for the SOFTWARE. Unused Incidents and other entitlements expire at the end of each annual term. SUPPORT may
be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only. SUPPORT will be provided remotely from CONTRACTOR THROUGH CITRIX to your locations. Where on-site visits are mutually agreed, Ordering Activity will be billed for reasonable travel and living expenses in accordance with Ordering Activity’s travel policy. CONTRACTOR THROUGH CITRIX’ performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity will designate a Customer Support Manager (“CSM”) who will be the primary administrative contact; (ii) Ordering Activity will designate Named Contacts (including a CSM), preferably each CITRIX certified, and each Named Contact (excluding CSM) will be supplied with an individual service ID number for contacting SUPPORT; (iii) Ordering Activity agree to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by CONTRACTOR THROUGH CITRIX. Ordering Activity agrees to cooperate with such requests; (iv) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of SOFTWARE and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (v) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity’s site and providing CONTRACTOR THROUGH CITRIX with access to Ordering Activity’s facilities and systems required to operate the SOFTWARE and perform the service called for by this ATTACHMENT A; and (vi) Ordering Activity is required to implement all currently available and applicable hotfixes, hotfix rollout packs, and service packs or their equivalent to the SOFTWARE in a timely manner. CONTRACTOR THROUGH CITRIX is not required to provide any SUPPORT relating to problems arising out of: (i) Ordering Activity’s customization to the operating system or environment that adversely affects the SOFTWARE; (ii) any alterations or additions to the SOFTWARE performed by parties other than CONTRACTOR THROUGH CITRIX; (iii) use of the SOFTWARE on a processor and peripherals other than the processor and peripherals for which such SOFTWARE was designed and licensed for use on; or (iv) SOFTWARE that has reached End-of-Life. In situations where CONTRACTOR THROUGH CITRIX cannot provide a satisfactory resolution to Ordering Activity’s critical problem through normal SUPPORT methods, CONTRACTOR THROUGH CITRIX may engage its product development team to create a private fix. Private fixes are designed to address Ordering Activity’s specific situation and may not be distributed by Ordering Activity outside Ordering Activity’s organization without written consent from CONTRACTOR. CONTRACTOR retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are not SOFTWARE under the terms of this ATTACHMENT A and they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. With respect to infrastructure assessments or other consulting services, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the assessment are and shall remain the property of CONTRACTOR, subject to a worldwide, nonexclusive License to Ordering Activity for internal use.

4. DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS. Unless expressly permitted by applicable law, Ordering Activity may not transfer, rent, timeshare, or lease the SOFTWARE. Under the User or Device model, Ordering Activity may permanently reassign a License from one User to another or from one Device to another, and Ordering Activity may temporarily assign a License to a temporary worker while the User is absent or a License to a loaner device while the Device is out of service. If Ordering Activity purchased Licenses for the SOFTWARE to replace other CITRIX Licenses for other CITRIX SOFTWARE and such replacement is a condition of the transaction, Ordering Activity agrees to destroy those other CITRIX Licenses and retain a copy after installation of the new Licenses and SOFTWARE. Ordering Activity shall provide the serial numbers of such replaced Licenses and corresponding replacement Licenses to the reseller, and upon request, directly to CONTRACTOR for license tracking purposes. Except as specifically licensed herein, Ordering Activity may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy (except for backup as permitted above) the SOFTWARE, except to the extent such foregoing restriction is expressly prohibited by applicable law. Ordering Activity may not remove any proprietary notices, labels, or marks on any SOFTWARE. Notwithstanding the foregoing, this ATTACHMENT A shall not prevent or restrict Ordering Activity from exercising additional or different rights to any free, open source code, documentation and materials contained in or provided with the SOFTWARE in accordance with the applicable free, open source license for such code, documentation, and materials.

ORDERING ACTIVITY MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR ANY COPY IN WHOLE OR IN PART, OR GRANT ANY RIGHTS IN THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, EXCEPT AS EXPRESSLY PROVIDED IN THIS ATTACHMENT A. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY CONTRACTOR OR ITS SUPPLIERS.

5. LIMITED WARRANTY AND DISCLAIMER. CONTRACTOR warrants that for a period of ninety (90) days from the date of delivery of the SOFTWARE to Ordering Activity, the SOFTWARE will perform substantially in accordance with the CITRIX PRODUCT documentation published by CITRIX and included with the PRODUCT. CONTRACTOR and its suppliers’ liability and Ordering Activity’s remedy under this warranty (which is subject to Ordering Activity returning the SOFTWARE to CONTRACTOR or an authorized reseller) will be, at the option of CONTRACTOR and subject to applicable law, to replace the media and/or SOFTWARE or to refund the purchase price and terminate this ATTACHMENT A. CONTRACTOR will provide the SUPPORT requested by Ordering Activity in a professional and workmanlike manner, but CONTRACTOR cannot guarantee that every question or problem raised by Ordering Activity will be resolved or resolved in a certain amount of time. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY FOR SOFTWARE, CONTRACTOR AND ITS SUPPLIERS MAKE AND ORDERING ACTIVITY RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND CONTRACTOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO SOFTWARE, UPDATES, SUBSCRIPTION ADVANTAGE, AND SUPPORT ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND HARDWARE TO ACHIEVE ORDERING ACTIVITY’S INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE AND HARDWARE.

6. PROPRIETARY RIGHTS. No title to or ownership of the SOFTWARE is transferred to Ordering Activity. CONTRACTOR and/or its licensors own and retain all title and ownership of all intellectual property rights in and to the SOFTWARE, including any/adaptations or copies. Ordering Activity acquires only a limited License to use the SOFTWARE.

Software” and that the use, duplication, and disclosure of the SOFTWARE by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this ATTACHMENT A. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, Ordering Activity hereby acknowledge that the Government’s right to use, duplicate, or disclose the SOFTWARE are “Restricted Rights” as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida, 33309.

EXHIBIT A – ORDERING ACTIVITY RETURN POLICY

Limited Warranty. Contractor warrants to Ordering Activity for each Product that the Hardware delivered as part of an Appliance shall be free from defects in material and workmanship in normal use for a period of one (1) year from the date of purchase. Ordering Activity’s remedy and the liability of Contractor, its licensors, and suppliers under this warranty. This warranty extends only to the original Ordering Activity and may not be assigned. Ordering Activity’s remedy and the liability of Contractor, its licensors and suppliers under this limited warranty (which is subject to Ordering Activity returning the Hardware to Contractor or an authorized reseller) will be, at the discretion of Contractor, to replace the Hardware or refund the purchase price. This warranty does not cover any loss or damage which occurs in shipment or which is due to any of the following: (1) improper installation, maintenance, adjustment, repair or modification by Ordering Activity or a third party; (2) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (3) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, or other irregularities; or (4) third party software or software drivers. Ordering Activity’s maintenance agreement as detailed in Exhibit B hereunder with Contractor will superseded this Ordering Activity Return Policy.

Warranty Returns. Ordering Activity may return to Contractor through Citrix any defective Product subject to the limited warranty above. Prior to such return, Ordering Activity shall verify that the Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix’s RMA procedures including providing the part number, serial number and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall use commercially reasonable efforts to send to Ordering Activity an RMA form and RMA number within five (5) business days of Ordering Activity’s request. Within five (5) business days after receiving an RMA number for the Product, Ordering Activity shall package the Product in its original packing material or equivalent, write the RMA number on the outside of the package and return the Product, at Contractor’s cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix’s designated facility. Ordering Activity shall reserve the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to the Product during shipping. Ordering Activity may elect to repair or replace the Product using new or reconditioned parts (of better or equivalent quality) at Citrix’s discretion, and shall pay the shipping costs to return the Product to the location from which it was returned by Ordering Activity. Any Product that has been returned, but that Citrix determines not to be defective, or that is not otherwise covered under the limited warranty above, shall be returned to Ordering Activity at Ordering Activity’s expense and risk. Title to any Product returned under warranty shall at all times remain with Ordering Activity unless and until Citrix either replaces the Product or pays Ordering Activity the Price of the Product in lieu of repair or replacement, at which time title shall pass to Citrix. The warranty period for any repaired or replaced Product shall be the longer of (a) ninety (90) calendar days from Citrix’s return shipment of the Product or (b) the original warranty period for the Product. Citrix shall not be responsible for any software, firmware, information, memory, data or the like of Ordering Activity or other’s contained in, stored on or integrated with any Product returned to Citrix for repair, whether or not under warranty.

EXHIBIT B – CITRIX APPLIANCE MAINTENANCE & TECHNICAL SUPPORT

1. SERVICES PROVIDED BY CITRIX.

Contractor through Citrix offers a range of maintenance programs for its Products (including standard Products and optional Products) as described below and as summarized in the below Citrix Appliance Maintenance Program Overview (the “Program Overview”). Ordering Activity shall be entitled to receive the following services to the extent Ordering Activity has ordered and paid in full the Annual GSA Fee for the applicable service. Ordering Activity must purchase maintenance services for its optional Products where Ordering Activity has maintenance services in place for the corresponding standard Product. Ordering Activity may purchase maintenance services for its optional Products only where it has maintenance services in place for the corresponding standard Product. Ordering Activity may also purchase optional installation and/or consulting services as offered by Contractor through Citrix.

Extended hardware Warranty D includes the following:

Except as otherwise provided in this Attachment A, Contractor warrants to Ordering Activity that the Hardware (as defined below) shall be free from material defects in materials and workmanship during the term of this Attachment A. Contractor’s liability and Ordering Activity’s remedy under this warranty shall be limited to repair or replacement of, or refund of the price paid for, the non-conforming Product at Contractor’s option. For purposes of this Attachment A, “Hardware” shall mean that portion of the Product that is not the Software. For purposes of this Attachment A, “Software” shall mean the Product software, in machine-readable form, and accompanying user documentation licensed to Ordering Activity by Contractor pursuant to an applicable purchase order between Ordering Activity and Contractor for such license.

Software Subscription Service D includes the following:

Software Updates.

Ordering Activity’s subscription for Software (“Subscription Advantage”) shall be effective during the term of this Attachment A, subject to Ordering Activity’s purchase of annual renewals (the “Subscription Term”). During the Subscription Term, Contractor may, from time to time, generally make Updates available for licensing to the public. For the purposes of this Attachment A, an Update shall mean a generally available release of the same Software. Upon general availability of Updates during the Subscription Term, Ordering Activity may obtain Updates by downloading the Update from Contractor through Citrix’s server via the Internet. Any such Updates so delivered to Ordering Activity shall be considered Software under the terms of this Attachment A, except they are not covered by the Limited Warranty applicable to Software, to the extent permitted by applicable law. Subscription Advantage may be purchased for the Software until it is no longer offered in accordance with the Citrix Product Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledges that Contractor through Citrix may develop and market new or different computer programs or editions of the Software that use portions of the Software and that perform all or part of the functions performed by the Software. Nothing contained in this Attachment A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that Contractor

is not obligated under this Attachment A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works Citrix (Incoterms 2000).

**Bronze/Silver/Gold Maintenance**

**Bronze Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service, plus each of the following:

**Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity’s designated contacts.

**Support Service Level.** Contractor through Citrix shall respond within twenty four (24) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twenty four (24) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

**Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above. Prior to such return, Ordering Activity shall verify that said Product is defective and shall obtain from Citrix a Return Material Authorization (“RMA”) number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix’s RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than ten (10) business days after Citrix’s issuance of an RMA number (or longer in countries where regulation requires export approval documentation in advance of RMA shipment). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix’s discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Ordering Activity’s cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix’s designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Citrix shall assume any and all risk of loss of or damage to such Product during shipping. Title to the defective Product shall pass to Citrix upon Citrix’s receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity, and Ordering Activity shall pay for the replacement Product at the then current GSA price. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix’s shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

**Silver Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

**Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity’s designated contacts.

**Support Service Level.** Contractor through Citrix shall respond within twelve (12) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twelve (12) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

**Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

**Gold Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

**Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Citrix’s support technician shall only be obligated to respond to Ordering Activity’s designated contacts.

**Support Service Level.** Contractor through Citrix shall respond within two (2) hours of receiving an inquiry from Ordering Activity regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

**Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

**Advance Return**

Prior to any return as to which Advance Return applies, Ordering Activity shall first verify that said Product is defective and shall obtain from Contractor through Citrix a Return Material Authorization (“RMA”) number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix’s RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than one (1) business day after Citrix’s issuance of an RMA number, except in countries where regulation requires export approval documentation in advance of RMA shipment (current list shown in the table below). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix’s discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Citrix’s shipping expense to Citrix’s designated facility. Title to the defective Product shall pass to Citrix upon Citrix’s receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity. The warranty period of any Product returned by Ordering Activity that is determined by Citrix to be not defective shall be restored to the extent such Product is not further used or installed and is returned in the same condition as upon delivery.

**Advance Return applies, Ordering Activity shall first verify that said Product is defective and shall obtain from Contractor through Citrix a Return Material Authorization (“RMA”) number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix’s RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than one (1) business day after Citrix’s issuance of an RMA number, except in countries where regulation requires export approval documentation in advance of RMA shipment (current list shown in the table below). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix’s discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Citrix’s shipping expense to Citrix’s designated facility. Title to the defective Product shall pass to Citrix upon Citrix’s receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity. The warranty period of any Product returned by Ordering Activity that is determined by Citrix to be not defective shall be restored to the extent such Product is not further used or installed and is returned in the same condition as upon delivery.
replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix’s shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

*Current list of countries requiring export approval documentation before shipment of replacement Product:

<table>
<thead>
<tr>
<th>Country</th>
<th>RMA Documents</th>
<th>Time Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>CVO/EX A/Embassy</td>
<td>10 business days</td>
</tr>
<tr>
<td>Jordan</td>
<td>CVO/EX A/Embassy/Min. foreign</td>
<td>10 business days</td>
</tr>
<tr>
<td>Kuwait</td>
<td>EX A/Embassy/CVO</td>
<td>10 business days</td>
</tr>
<tr>
<td>Qatar</td>
<td>EX A/Embassy/CVO/Min. foreign</td>
<td>10 business days</td>
</tr>
<tr>
<td>Norway</td>
<td>EU A</td>
<td>1 business day</td>
</tr>
<tr>
<td>Switzerland</td>
<td>EU A</td>
<td>1 business day</td>
</tr>
<tr>
<td>Dubai/United Arab Emirates</td>
<td>CVO/EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Israel</td>
<td>CVA/EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>EX A/CVO</td>
<td>2 business days</td>
</tr>
<tr>
<td>South Africa</td>
<td>EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Turkey</td>
<td>EX A/ATR</td>
<td>2 business days</td>
</tr>
</tbody>
</table>

4-hour Advance Return
Where available, and upon payment of the applicable GSA fees, Ordering Activities receiving Gold Maintenance may select an optional expedited Advance Return service. The features of the 4-hour Advance Return are the same as the standard Advance Return above, except that Contractor through Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than four (4) hours after Citrix’s issuance of an RMA number.

Onsite Support
This Attachment A does not include onsite support. In critical situations, Ordering Activity may request onsite support as a separate and distinct billable service, subject to a separate purchase order between Contractor and Ordering Activity. Onsite support is subject to Contractor through Citrix resource availability, and the tasks performed will vary based on the situation, environment, and business impact of the problem.

Product Development Support
In situations where Contractor through Citrix cannot provide a satisfactory resolution to Ordering Activity’s critical problem through normal support methods, Citrix may engage its product development team to create a Ordering Activity-specific solution (a “Private Fix”) to the Products. Privates Fixes are designed to address a specific Ordering Activity situation and may not be distributed by Ordering Activity outside the Ordering Activity organization without written consent from Citrix. Private Fixes and hotfixes are provided ‘as-is’, without warranty of any kind applicable to Software pursuant to this Attachment A to the extent permitted by applicable law. Citrix retains all right, title and interest in and to all Private Fixes.

Technical Relations Management
Ordering Activity may select an optional Technical Relations Manager (TRM) to enhance the technical support relationship between Ordering Activity and Contractor through Citrix. The TRM provides high-level technical expertise and proactive services, and also serves as the point of information delivery and feedback to Citrix product groups, research and development teams, and other Citrix groups. These services include:

- Orientation Session. At the start of this service, an initial orientation session will be scheduled for the TRM to introduce the Ordering Activity to Citrix Technical Support contact information and processes.
- Escalation Management. In cases where issues need engineering assistance, the TRM will act as the Ordering Activity’s advocate and function as point-of-contact to assist in rapid resolution of the incident.
- Implementation and Informational Reviews. The TRM will be a resource for the Ordering Activity to assist with product information and recommendations for integration of Citrix products in the Ordering Activity environments.
- Incident Tracking and Status Reporting Sessions. TRM will provide the Ordering Activity on a regular basis, reports summarizing Ordering Activity account information such as incidents opened and status updates.

TRM services can only be used in a single geographical region. Ordering Activities wishing to use TRM services in more than one region must purchase 200 hour blocks in each region. All TRM purchased hours are valid for 12 months from date of purchase; unused TRM hours do not roll over into a subsequent purchase order term. Citrix regions are as follows: (a) Americas – North America, Latin America, and the Caribbean; (b) EMEA – Europe, Middle East and Africa; (c) Asia Pac – Asia, New Zealand and Australia and (d) Japan. Ordering Activities should contact Contractor through Citrix Technical Support to determine TRM service availability in their region.

2. ORDERING ACTIVITY RESPONSIBILITIES.

a. Ordering Activity Assistance. Contractor through Citrix’s performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity agrees to provide Citrix reasonable access to all necessary personnel to answer questions or resolve problems reported by Ordering Activity regarding the Products; (ii) Ordering Activity agrees to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by Citrix. Ordering Activity agrees to cooperate with such requests; (iii) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of Software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures;
(iv) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity’s site; (v) Ordering Activity is required to implement all currently available and applicable Updates and error corrections provided by Citrix under this Attachment A in a timely manner, including hotfixes, hotfix rollup packs, and service packs or their equivalent; and (vi) Ordering Activity shall allow Citrix access as needed to the Products via the Internet for the purpose of providing support services and shall permit Citrix to perform the support services called for by this Attachment A. Ordering Activity shall maintain Citrix supported versions of required third party software, if any.

b. Named Contacts. Ordering Activity shall appoint at least two (2) named contacts within Ordering Activity’s organization to serve as contacts between Ordering Activity and Contractor through Citrix and to receive support through Citrix’s telephone support center. Ordering Activity’s contacts shall have been adequately trained on the Software and shall have sufficient technical expertise, training and experience.

3. EXCLUSIONS.

Notwithstanding anything in this Attachment A to the contrary, Contractor through Citrix shall have no obligation or responsibility to provide any support services relating to problems arising out of or related to (i) Ordering Activity’s failure to implement all updates to the Software which are made available to Ordering Activity under this Attachment A; (ii) the failure to provide a suitable installation environment; (iii) Ordering Activity’s customization to the operating system or environment that adversely affects the Software; (iv) any alteration, modification, enhancement or addition to the Products performed by parties other than Citrix; (v) use of the Products in a manner, or for a purpose, for which it was not designed; (vi) accident, abuse, neglect, unauthorized repair, inadequate maintenance or misuse of the Products; (vii) operation of the Products outside of environmental specifications; (viii) interconnection of the Software with other software products not supplied by Citrix; (ix) use of the Software on any systems other than the specified hardware platform for such Software; or (x) introduction of data into any database used by the Software by any means other than the use of the Software. Notwithstanding anything else contained in this Attachment A to the contrary, Citrix shall only be obligated to provide support for eligible Products as indicated in the Citrix Appliance End of Life Policy available www.citrix.com. This website reference is for informational purposes only.

4. OWNERSHIP AND USE; WARRANTY DISCLAIMER.

a. Ownership and Use. All Updates and other changes, improvements, bug fixes or other modifications to the Software provided under this Attachment A shall be deemed to be included within the Software and shall be subject to the terms and conditions of this Attachment A except that they are not covered by the warranty. With respect to installation and consulting services relating to the Product purchased from Contractor, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and all other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the property of Contractor, subject to a worldwide, nonexclusive license to Contractor for internal use.

b. Warranty and Warranty Disclaimer. Contractor shall use all reasonable commercial efforts to provide the support, installation and consulting services requested by Ordering Activity under this Attachment A in a professional and workmanlike manner, but Contractor cannot guarantee that every question or problem raised by Ordering Activity shall be resolved. OTHER THAN THE EXPRESS LIMITED WARRANTIES MADE BY CONTRACTOR, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVES, NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND CONTRACTOR HEREBY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS INCLUDING WITHOUT LIMITATION THOSE ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE AND THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND SATISFACTORY QUALITY.

HOW TO CONTACT CITRIX TECHNICAL SUPPORT

If Ordering Activity purchased maintenance for Citrix products, Ordering Activity can contact Citrix Technical Support either by phone or via the Internet. In order to contact Citrix Technical Support each individual named contact must have a valid support agreement number in place. If Ordering Activity purchased maintenance and Ordering Activity have been designated a named contact, Ordering Activity should have received Ordering Activity’s individual agreement number via email. However, if Ordering Activity has not received Ordering Activity’s agreement number, please send an email to Contractor through Citrix (addresses provided below) with your name, company name, phone number and serial number of the unit.

Phone

- From North America, Latin America, and the Caribbean, please dial: 1-800-424-8749 or (954) 267-2599
- From EMEA (Europe, Middle East, Africa), please dial: 00353-1-805-5000
- From APAC (Australia, New Zealand and Asia), please dial: +61-2 8870 0899
- From Japan, please contact your distributor directly.

Ordering Activity may also find Ordering Activity’s country specific toll free phone number by going to the following website address: www.citrix.com/English/ss/supportContacts.asp

Internet

- Log on to www.mycitrix.com
- Navigate to the Toolbox and select “My Support”. This will direct Ordering Activity to the eService Self Service Homepage. This view provides links with associated descriptions in a user friendly web-based format. These links will include Service Requests, Agreements and Returns / Exchange Orders. Ordering Activity can find more details as you navigate through each link.

Email
• From North America, Latin America and the Caribbean, please use techsupport_na@citrix.com
• From EMEA (Europe, Middle East, & Africa), please use techsupport_emea@citrix.com
• From APAC (Australia, New Zealand and Asia), please use techsupport_apac@citrix.com
• From Japan, please contact your distributor directly.

CITRIX APPLIANCE MAINTENANCE PROGRAM OVERVIEW

As an Ordering Activity, Ordering Activity is entitled the following services as described in this document to the extent Ordering Activity has ordered and paid in full the Annual Fee for the applicable service.

Ordering Activity puts confidence in Contractor through Citrix when Ordering Activity installed products in Ordering Activity’s network infrastructure. Citrix wants that confidence to last, and is committed to making sure Ordering Activity’s Citrix Appliance is successfully implemented and continues to work to provide a robust solution for Ordering Activity’s applications. The Citrix Appliance Maintenance Program has been designed to help sustain, grow and enhance our products within Ordering Activity’s infrastructure, so Ordering Activity can be assured of their performance every step of the way.

The levels of maintenance that are available for the Citrix products are:

Bronze (not currently available for Citrix Access Gateway)
- Unlimited incidents during each one-year term
- Standard business hours (see technical support coverage hours below)
- One year of software updates and bug fixes
- 2 named contacts
- Standard replacement for materials (ships within 10 business days after issuing the RMA number*)

Silver
- Unlimited incidents during each one-year term
- Standard business hours (see technical support coverage hours below)
- One year of software updates and bug fixes
- Assigned Support Account Manager for non-technical Relations Management Services
- 4 named contacts
- Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

Gold
- Unlimited incidents during each one-year term
- 24 x 7 coverage hours
- One year of software updates and bug fixes
- Assigned Support Account Manager for non-technical Relations Management Services
- 6 named contacts
- Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

* Please note that in countries where regulation requires export approval documentation in advance of RMA shipment, the time for shipment may be longer.

<table>
<thead>
<tr>
<th>Citrix Appliance Technical Support Coverage Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bronze</strong></td>
</tr>
<tr>
<td>North America, Latin America, and the Caribbean</td>
</tr>
<tr>
<td>Asia (excluding Japan*)</td>
</tr>
<tr>
<td>Australia &amp; New Zealand</td>
</tr>
<tr>
<td>Europe, Middle East, &amp; Africa</td>
</tr>
<tr>
<td><strong>Silver</strong></td>
</tr>
<tr>
<td>North America, Latin America, and the Caribbean</td>
</tr>
<tr>
<td>Asia (excluding Japan*)</td>
</tr>
<tr>
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<tr>
<td>Australia &amp; New Zealand</td>
</tr>
<tr>
<td>Europe, Middle East, &amp; Africa</td>
</tr>
</tbody>
</table>

*Ordering Activities in Japan should contact their local distributor for technical support coverage.

Contractor through Citrix’s tiered Citrix Appliance Maintenance Program allows Ordering Activity to select the level of service that is best for Ordering Activity. Citrix’s goal is to continue to earn Ordering Activity’s confidence and to exceed Ordering Activity’s expectations. If Ordering Activity has not already chosen a Citrix Appliance Maintenance Program, please review the levels above.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CODE42 SOFTWARE, INC.
CODE42 SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

By both parties executing this agreement in writing you agree to this Master Services Agreement ("Agreement"). If you do not agree to this Agreement, you must not use any of the Offerings. "You" or "Ordering Activity" means the undersigned Ordering Activity under GSA Schedule contracts. "Code42" means Code42 Software, Inc. This Agreement governs your use of all of the Offerings in your Order and is effective as of the date you first use any of the Offerings. This Agreement expires at the end of the last Subscription Term for the Order under which you accepted this Agreement.

1. DEFINITIONS

1.1 "Affiliate" means, for a party at a given time, an entity that is directly controlled by, under common control with, or controls that party, where "control" means an ownership, voting or similar interest representing more than 50% of the total interests then outstanding of that entity.

1.2 "Authorized Users" means (A) you, (B) your Affiliates, and (C) your and your Affiliate’s employees, contractors and service providers.

1.3 "Cloud Services" means the cloud-based service offerings that Code42 provides to you.

1.4 "Customer Data" means any data that you provide to Code42 through the Software or Cloud Services.

1.5 "Documentation" means the information about using the Software or Cloud Services that Code42 makes available at https://support.code42.com/Administrator and https://support.code42.com/CrashPlan.

1.6 "Intellectual Property Rights" means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications and moral rights, whether registered or unregistered.

1.7 "Offerings" means all products and services that Code42 provides to you under this Agreement.

1.8 "Offering Description" means the terms applicable to an Offering available at https://support.code42.com/Terms_and_conditions/Code42_customer_support_resources/Code42_enterprise_support_policy, https://support.code42.com/Terms_and_conditions/Code42_customer_support_resources/Code42_University_policies or https://www.code42.com/professional-services/.

1.9 "Order" means an ordering document, signed Quote or online submission that you issue to Code42, or a Code42 authorized reseller, in response to a Quote.

1.10 "Service Level Agreement" means the service level agreement available at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Cloud_storage_service_level_agreement.

1.11 "Software" means the commercial software (including updates and upgrades provided through support) in object code format that Code42 provides to you.

1.12 "Subscription Term" means the term during which you may use the Offerings.

1.13 "Technical Services" means the standard service offerings described at https://www.code42.com/professional-services/.

1.14 "Quote" means Code42’s written or website description of the Offerings and applicable terms.

2. CUSTOMER USE OF THE OFFERINGS.

2.1 Authorized Users. You may allow your Authorized Users to use the Cloud Services and Software as "you" under this Agreement. You are responsible for your Authorized Users’ compliance with this Agreement.

2.2 Software and Cloud Services. Code42 grants you a nonexclusive, non-sublicensable, non-transferable (except as set forth in section 12.1 (General: Assignment)), worldwide license to use the Software, Cloud Services and Documentation during the Subscription Term solely for your internal business purposes. You must only use the Software and Cloud Services for up to the number of users or devices listed on your Quote and in accordance with the Documentation. You may copy the Software and Documentation as necessary to install and run the Software, and for backup and archiving. Code42 will provide the Cloud Services in accordance with the applicable Documentation and Service Level Agreement. You will reasonably cooperate with Code42 to resolve any issues relating to your use of the Software and Cloud Services. To use the Cloud Services, you must create login credentials (e.g. a username and password). You are responsible for all activity occurring under your login credentials and will notify Code42 as soon as possible if you believe there has been any unauthorized use of your login credentials.

2.3 Other Offerings. If you purchase other Offerings, including support, appliance maintenance, hardware and education services, Code42 will provide those Offerings in accordance with the Offering Description.

2.4 Restrictions. You will not (A) permit anyone other than your Authorized Users to use the Offerings; (B) use the Offerings for the benefit of any third party other than your Authorized Users; (C) use the Offerings except as permitted under this Agreement; (D) decompile, reverse engineer, modify or create a derivative work of the Offerings (to the extent this restriction is not prohibited by law); (E) attempt to test the vulnerability of, gain unauthorized access to, or circumvent limitations on the use of, the Offerings or their related systems or networks; (F) interfere with the performance of the Offerings; or (G) remove any copyright or other proprietary notices in the Offerings.

2.5 Evaluation Use. Code42 may make an Offering or a new feature or functionality available to you on an evaluation or beta basis ("Evaluation Offering"). Each Evaluation Offering is provided “AS IS” without indemnification, Service Level Agreement, support or warranty of any kind. You must only use an Evaluation Offering in a non-production environment for evaluation purposes during the evaluation period set by Code42.

3. INTELLECTUAL PROPERTY

3.1 Customer Ownership. As between you and Code42, you retain all right, title and interest in and to the Customer Data and all related Intellectual Property Rights. You grant Code42 a royalty-free, non-exclusive, non-transferable (except as set forth in section 12.1 (General: Assignment)), sublicensable, worldwide right to use Customer Data solely to provide the Offerings to you under this Agreement. Code42’s rights to use the Customer Data are only those expressly granted in this Agreement.
3.2 Code42 Ownership. As between you and Code42, Code42 retains all right, title and interest in and to the Offerings and all related Intellectual Property Rights. Your rights to use the Offerings are only those expressly granted in this Agreement. All Software is licensed and not sold, even if Code42 uses words like “sale” or “purchase” in sales materials.

3.3 Feedback. If you provide any suggestions to Code42 regarding the Offerings, you grant Code42 a royalty-free, non-exclusive, transferable, sublicensable, worldwide, perpetual, irrevocable license to use the suggestions and incorporate them into the Offerings. Code42 acknowledges that the ability to use the Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

3.4 Open Source Compliance. “Open Source Software” means the software components that Code42 provides in the Software under separate license terms that are found either in the open_source_licenses.txt file (or similar file) provided within the Software or at http://support.code42.com/Terms_And_Conditions/Open_Source_Licenses. Open Source Software is licensed to you under its own applicable license terms. These license terms are consistent with the license granted in section 2.2 (Customer Use of the Offerings: Software and Cloud Services) and take precedence over this Agreement to the extent that this Agreement imposes greater restrictions on you. If required, Code42 makes the Open Source Software source code and modifications (the “Source Files”) available to you on the Code42 website or on written request. You will send requests with your name and address to Code42 at the address in section 12.6 (General: Notice) specifying: Attention: General Counsel - Open Source Files Request. This offer to obtain a copy of the Source Files is valid for three years from the date you acquired the Software containing the Open Source Software.

4. SECURITY AND DATA PROCESSING

4.1 Code42 Obligations. Code42 will provide the Software and Cloud Services in accordance with the Information Security Addendum at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Information_security_addendum. Code42 will process your Customer Data in accordance with the Data Processing Addendum at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Data_processing_addendum. Following the expiration of your Subscription Term, Code42 will delete any Customer Data in accordance with the applicable Documentation. If you request, Code42 will provide written certification that Code42 deleted your Customer Data.

4.2 Customer Obligations. You are responsible for providing notices, obtaining consents, and satisfying any other requirements for Code42 to use the Customer Data to perform its obligations under this Agreement. You will not provide Code42 with any data that is regulated by the United States Health Insurance Portability and Accountability Act unless you have entered into a business associate agreement with Code42.

4.3 Code42 Data. (A) Code42 collects de-identified information and aggregated information about the use and performance of the Software and Cloud Services (“Service Data”). Service Data may include information about the frequency of feature usage, technical performance metrics, product configuration, and file usage patterns. Service Data never includes Customer Data. Code42 owns the Service Data and uses it to improve the Offerings and create new products. (B) Code42 also collects account-related data during your purchase and use of the offerings (“Administrative Data”). Administrative Data never includes Customer Data. Code42 owns the Administrative Data and uses it to provide the Offerings, bill you for the Offerings, advise you of new Code42 products and service, and comply with Code42’s contractual obligations and applicable law. Code42 is an independent controller of the Administrative Data and will process the Administrative Data under the Code42 privacy policy available at: https://www.code42.com/privacy-policy.

5. ORDERING AND PAYMENT

5.1 Orders. You may purchase Offerings directly from Code42 or through a Code42 authorized reseller. If you purchase through a Code42 authorized reseller, sections 5.2 (Ordering and Payment: Affiliate Orders), 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Disputed Payments), 5.6 (Ordering and Payment: Taxes) and 5.7 (Ordering and Payment: Delivery) will not apply to that purchase. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of this Section. The Subscription Term is a continuous and non-cancelable commitment for the full duration of the Subscription Term. Except as required by applicable law and regulations, all Orders are non-refundable and non-cancelable except as expressly provided in this Agreement.

5.2 Affiliate Orders. Your Affiliates whom you identify in an email sent to Code42 at PO@code42.com may submit Orders as “you” to Code42 under this Agreement. You will place Orders with Code42 or its Affiliate as indicated on the Quote. If you place an Order with a Code42 Affiliate, then that Affiliate will act as “Code42” for sections 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Disputed Payments), 5.6 (Ordering and Payment: Taxes) and 5.7 (Ordering and Payment: Delivery). Each party is responsible for its Affiliate’s compliance with this Agreement.

5.3 Payment. Code42 will invoice you for the fees stated on your Quote in accordance with the GSA Schedule Pricelist after accepting your Order. You will pay all applicable and valid fees in the amount and currency specified on your invoice within 30 days of the invoice receipt date. You will pay any delinquent amounts within 30 days of Code42’s written notice identifying a delinquency.

5.4 Money Back Guarantee. This section does not apply to any CrashPlan for Small Business offering. If you are not completely satisfied with your initial purchase of Software or Cloud Service offering for compliance for convenience by providing written notice to Code42 during the first 60 days of the Subscription Term, Code42 will promptly refund you the amount that Code42 received for the unused portion of the Subscription Term for the terminated Software or Cloud Services offering. This termination right only applies to your initial purchase of a specific Software or Cloud Service offering (and not to any renewal, staggered deployment or expansion order) and only if you purchased Code42’s deployment services available for the offering.

5.5 Reserved.

5.6 Taxes. Code42 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the Offerings) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.7 Delivery. When Code42 accepts your Order, Code42 will make cloud services available to you and deliver license keys to you by email to the address associated with your account. Code42 will provide any physical goods to the carrier listed on the Quote for shipment to you. Shipping and delivery terms for physical goods are Ex Works Code42’s regional fulfillment facility (INCOTERMS 2010). You are the importer of record if Code42 ships physical goods to you in a country in which Code42 does not have a physical presence.

6. MODIFICATIONS. This Agreement incorporates by reference all of the documents that this Agreement identifies as applicable to your ordered Offerings (“Ancillary Documents”). Ancillary Documents may include the Documentation, Service Level Agreement, Information Security Addendum, Data Processing Addendum and Offering Descriptions. Because the Offerings are continually evolving, Code42 may update any of the Ancillary Documents from time to time so long as the update is not material (as defined in 48 CFR § 552.212-4(w)(1)(vi)), and the Ancillary Document applicable at any time is the then-current version. Code42 will notify you in writing if any update to an Ancillary Document is material, and in that case you and Code42 may amend the Agreement to incorporate the change or you may elect in writing to terminate the affected Offering. If you terminate the Offering, Code42 will refund the portion of the fees applicable to the unused portion of the Subscription Term for the terminated Offering.

7. WARRANTIES

7.1 Software and Cloud Services Warranty. Code42 warrants that the Software and Cloud Services will substantially conform to the applicable Documentation for a period of 120 days following notice of availability for electronic download or access (“Warranty Period”). This warranty only applies if the Software and Cloud Services were properly installed and used in unmodified form in accordance with the Documentation. For any reproducible error identified in writing during the Warranty Period, Code42 will either replace that Software or Cloud Service or correct the error. If Code42 determines
that it cannot correct the error or replace the Software or Cloud Service, Code42 will refund to you the amount that Code42 received for the unused portion of the Subscription Term after the date you notified Code42 of the breach for that Software or Cloud Services offering, in which case your rights to use that Software or Cloud Service will terminate. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Software and Cloud Services warranty.

7.2 Technical Services Warranty. Code42 warrants that it will perform Technical Services in a workmanlike manner in accordance with the standards of the industry. You may provide written notice to Code42 within 10 business days after any alleged breach of this warranty. Code42 will correct that breach or terminate that Technical Service and refund to you the amount that Code42 received for that Technical Service. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Technical Services warranty.

7.3 Disclaimer. The express warranties set forth in section 7 (Warranties) are in lieu of all other warranties. To the extent permitted by law, Code42 disclaims all other warranties, whether express, implied or statutory (including any implied warranties of merchantability, fitness for a particular purpose, title or noninfringement), and any warranties arising from usage of trade, course of dealing or course of performance. Code42 does not warrant that the Offerings will meet your requirements or that they will be accurate or operate without interruption or error.

8. INDEMNIFICATION

8.1 Code42 Indemnification.
(A) Subject to the remainder of section 8.1 (Indemnification: Code42 Indemnification), Code42 will defend you against any unaffiliated third party claim that the Software or Cloud Services infringe any patent, trademark or copyright, or misappropriate a trade secret, of that third party under the laws of (1) the United States, (2) Canada, (3) the United Kingdom, (4) Australia, and (5) any European Economic Area member state ("Infringement Claim").

(B) Code42 will indemnify you from the resulting costs and damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to in settlement. Code42’s obligations only apply if you: (a) promptly notify Code42 of the Infringement Claim in writing, (b) allow Code42 sole control over the defense for the claim and any settlement negotiations, and (c) reasonably cooperate in response to Code42’s requests for assistance.

You may not settle or compromise any Infringement Claim without Code42’s prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

(B) If Software or Cloud Service become, or in Code42’s opinion is likely to become, the subject of an Infringement Claim, Code42 will at its option and expense do one of the following: (1) procure the rights necessary for you to make continued use of the affected Software or Cloud Service; (2) replace or modify the affected Software or Cloud Service to make it non-infringing; or (3) terminate your right to use the affected Software or Cloud Service, and upon your certified deletion of any affected Software, refund you the portion of the fees applicable to the unused portion of the Subscription Term. Code42 will indemnify you from the resulting costs and damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to in settlement. Code42’s obligations under section 8.1(A) (Indemnification: Code42 Indemnification) to defend and indemnify you, provided that you replace any allegedly infringing Software upon Code42’s making alternate Software available to you and you discontinue using any allegedly infringing Software upon receiving Code42’s notice terminating your license to use the Software.

(C) Code42 will not have any obligation under section 8.1(A) (Indemnification: Code42 Indemnification) with respect to any claim based on (1) a combination of Software or Cloud Services with non-Code42 products or Customer Data; (2) continued use of an infringing version of the Software after Code42 has provided you a non-infringing version under section 8.1(B) (Mutual Indemnification: Code42 Indemnification); (3) any modification to the Software by anyone other than Code42; or (4) any Software or Cloud Services provided on a no charge, beta or evaluation basis.

(D) This section 8.1 (Indemnification: Code42 Indemnification) is your sole exclusive remedy and Code42’s entire liability for any infringement claims or actions.

8.2 Reserved.

9. LIMITATIONS OF LIABILITY

9.1 Exclusion of Damages. Neither Code42 nor you are liable for any lost profits or business opportunities, loss of use, business interruption, or any indirect, special, incidental or consequential damages under any theory of liability. This exclusion applies regardless of whether Code42 or you have been advised of the possibility of those damages and regardless of whether any remedy fails of its essential purpose.

9.2 Cap on Monetary Liability. The maximum aggregate liability for Code42 or you for claims under this Agreement will not exceed an amount equal to the contract price, including total fees paid or payable to Code42 for your use of the Offerings.

9.3 Reserved.

9.4 Exclusions. The exclusions and limitations in section 9 (Limitations of Liability) will not apply to: (A) either party’s violation of the other party’s or its licensor’s Intellectual Property Rights; (B) either party’s obligations in section 8 (Mutual Indemnification); (C) your payment obligations under section 5 (Orders and Payment); (D) either party’s liability for death or personal injury caused by its negligence; (E) Fraud; or (F) any liability that cannot be excluded under applicable law.

10. CONFIDENTIAL INFORMATION

10.1 Obligations. “Confidential Information” means non-public information provided in connection with this Agreement that is labeled “confidential” or the like, or is provided under circumstances reasonably indicating its confidentiality. Code42’s Confidential Information includes product roadmaps. Your Confidential Information includes your Customer Data. A party ("recipient") may use Confidential Information of the other party (“discloser”) solely to exercise its rights and perform its obligations under this Agreement. Code 42 and you will each protect the other party’s Confidential Information in the same manner as it protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care.

10.2 Disclosure. The recipient’s obligations under section 10.1 (Confidential Information: Obligations) will terminate with respect to any Confidential Information that the recipient can show: (A) was already rightfully known to the recipient without any obligation of confidentiality at the time of disclosure; (B) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (C) was at the time of disclosure, or through no fault of the recipient has become, generally available to the public; or (D) was independently developed by the recipient without access to or use of the discloser’s Confidential Information. Code42 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by Code42.

10.3 Permitted Disclosures. The recipient may disclose Confidential Information only to its employees, professional advisors, service providers or contractors who have a need to know the Confidential Information and who are under a similar duty of confidentiality. The recipient may also disclose Confidential Information to the extent required by law or regulation, in which case the recipient will notify the discloser as soon as practicable and if permitted by law or regulation. At the disclosing party’s request and expense, the recipient will take reasonable steps to contest and to limit the scope of any required disclosure.

10.4 Reserved.

11. TERM AND TERMINATION

11.1 Term. This Agreement will remain in effect until the later of (A) the end of the period identified in the preamble or (B) the termination or expiration of all Orders. Either party may terminate this Agreement before the end of the Term in accordance with the Contract Disputes Act and Federal Acquisition Regulation if expressly permitted by this Agreement. The Subscription Term and any renewal is described in the applicable Quote. If you place an Order after the start date stated on your Quote, Code42 may adjust your start date as described in the Quote, in which case your Subscription Term will be described on your invoice.
11.2 **Termination.** When you are an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Code42 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.3 **Effect of Expiration or Termination.** Upon termination or expiration of an Order, you will stop using and Code42 will stop providing the applicable Software or Cloud Services. Upon termination or expiration of this Agreement, Code42 and you will each delete any Confidential Information of the other party.

11.4 **Survival.** The following sections will survive termination or expiration of this Agreement: 3 (Intellectual Property); 4 (Security and Data Processing); 5.3 (Ordering and Payment Payment); 7.3 (Warranties: Disclaimer); 8 (Mutual Indemnification); 9 (Limitations of Liability); 10 (Confidentiality); 11 (Term and Termination); and 12 (General).

12. **GENERAL.**

12.1 **Assignment.** Neither party may assign its rights or obligations under this Agreement or any Order, by operation of law or otherwise, without the prior written consent of the other party. But either party may assign this Agreement without consent to its Affiliates or to any successor or assign that has acquired substantially all of its business relating to this Agreement. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any purported assignment in violation of this section is void.


12.3 **Compliance with Laws.** Each party will comply with any statutes and regulations that apply to it in its performance under this Agreement.

12.4 **Export Compliance.** The Offerings are of United States origin, are provided subject to the U.S. Export Administration Regulations, and may be subject to export control laws. You are not, and are not acting on behalf of: (A) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (B) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List. You are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, your United States export privileges.

12.5 **U.S. Government Rights.** Code42 offers the Offerings, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Offerings include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software). If a government agency has a need for rights not granted under these terms, it must negotiate with Code42 to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

12.6 **Notice.** All notices will be in writing and deemed given the second business day after mailing if sent by a recognized overnight courier (receipt requested). Code42 will send notices to you at the address in your Quote. You will send notices to Code42 at: Code42 Software, Inc., 100 Washington Ave., 20th Floor, Minneapolis, MN 55401, United States of America, Attention: General Counsel. Except for notices of termination or indemnification, notices may also be delivered by email and are effective the business day after sending. Code42 will email billing-related notices to the billing contact that you designate. Code42 will email Offering-related notices to the system administrator that you designate. You will email all notices to Code42 at legal@code42.com.

12.7 **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

12.8 **Entire Agreement.** The Agreement as it may be modified from time to time by both parties in writing, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement of the parties regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter. In the event of a conflict, the descending order of precedence is: (A) the Quote, (B) the Agreement, and (C) the applicable Ancillary Document. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

12.9 **Counterparts.** Each party may sign this agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

12.10 **Waiver and Amendment.** The waiver of any breach of any provision of the Agreement will not constitute a waiver of any other provision or any later breach. Any modification of this Agreement must be in writing and signed by the party against whom the modification will be enforced.

12.11 **Relationship of the Parties.** The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture or agency relationship. Neither party has any authority to assume or create any obligation of any kind in the name of or on behalf of the other party.

12.12 **Third Party Rights.** Other than as expressly provided in this Agreement, the Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.13 **Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the maximum extent feasible or permitted by law.

12.14 **Construction.** The Offerings will be provided in the English language. The word “including” means “including but not limited to.” Section headings are for convenience only and are not to be used in interpreting this Agreement.

*End of Agreement*
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached CommVault Systems, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

pp) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2i, as may be revised from time to time.

qq) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

rr) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included in the contract signed by the Government.

ss) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

tt) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

uu) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

vv) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

ww) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

xx) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

yy) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

zz) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
3.  Order of Precedence/Conflict

aaa) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

bbb) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

ccc) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

ddd) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

eee) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

fff) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

ggg) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

hhh) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

iii) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

jjj) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

kkk) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works of Licensor’s existing software or enhancements to the Licensor’ software shall remain with Commvault, however of any ownership in GSA Customer preexisting material shall remain independently with the GSA Customer. The parties agree that such ownership rights are in agreement with the those set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost for its own internal business.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
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Global Customer Support Services Guide

January 2018

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Welcome to Commvault Customer Support Services!

NOTE: Not all services are available for all products or customers. Customers with OEM-based or CASP level support may have different features offered through their primary Support contact.

Commvault's Customer Support Services options help you make the most of your investment in the Commvault software suite. We want you to get the most from your products throughout their life. Commvault offers different Support options based on your business requirements in order to enhance the value of your support investment and meet the needs of your business. You also receive access to a variety of other services that are valuable throughout the life of your products:

Product Updates
- Service Pack and Hot Fix availability
- New update notifications through the Support Notification Service

Online Services
- Access to the Commvault eSupport Portal ('Maintenance Advantage') with features specially-designed for our Support customers
- Access to Mobile Advantage App for iOS and Android with the ability to control your Support experience
- Online Knowledge Base
- Online Forum for real time discussion with Commvault experts and Commvault end-users
- Online documentation and FAQs for each product
- Notification of changes in open support service requests
- Support that is available 24/72, whenever a problem may occur
- Unlimited number of calls to Commvault Customer Support
- Regular updates on the status of open incidents
- Support engineers who are certified with high-skill security qualifications
- Remote debugging and re-configuration tools for rapid fault resolution
- Proactive site monitoring through the Commvault Metrics service

Other Features
- Telephone access to skilled engineers
- Product Upgrade Validation Automation Tools
- Commvault Support Log Upload Management
- Product Compatibility and Interoperability Matrices
- Cloud Metrics Reporting

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1 New release version upgrades may be made available by Commvault

2 For customers with Premium-based Maintenance Contracts
Support Offerings

2.1 Commvault Customer Support Programs

Commvault provides multiple support options for our customers; each is designed to meet the needs and requirements of a wide range of customers. These plans maximize your productivity, letting you focus on your core business.

2.2 Support Programs

As a Commvault customer, you rely on us to deliver the best software and support so that you can manage your data with the utmost results. To that end, we listen to your needs and anticipate your future requirements. We take this knowledge and design the best support programs to meet your needs at any level, to maximize your productivity and lower your costs.
2.2.1 Standard Support

The Standard Support offering provides broad business hours coverage with direct access to the Commvault Technical Assistance Center and is designed to support the majority of customer's needs. This package includes:

- Access to the Commvault Technical Assistance Center on business days (Monday - Friday), excluding statutory holidays, between the hours of 7 AM to 7 PM (local time\(^3\)) for the location where the software is installed
- 24x7 access to the Maintenance Advantage self-help website
- Notification of critical software update fixes
- Web E-Support such as Incident Management, Knowledge Database, Commvault Books Online and the Commvault Forums
- Support Account History Reports provided upon request

2.2.2 Premium Support

The Premium Support offering provides live access customer support over a comprehensive 24x7 coverage period. Premium Support includes:

- Around-the-clock access to the Commvault Technical Assistance Center (including holidays)
- 24x7 access to the Maintenance Advantage self-help website
- Notification of critical software updates product enhancements and new releases (when available)\(^4\)
- Web E-Support such as Incident Management, Knowledge Database, Commvault Books Online and the Commvault Forums
- Support Account History Reports provided upon request

2.2.3 Proactive Support

Proactive Support is an enhanced Commvault support offering that includes all of the benefits of Premium Support and additional value added services associated with mission critical data management operations. These services include:

- 15 minute Service Level Response Target for Severity 0 incidents
- Inclusive Premium Operations Management Reporting for all internet-connected CommServes
- Support Account Management Service. This service team:
  - Monitors open issues to ensure there is continued activity towards prompt resolution
  - Communicates directly with customer management to update and prioritize on high severity issues
  - Directs issue escalation to ensure continued ownership
- Monthly Technical Reviews with Support Account Management

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\(^3\) Standard Coverage Support for Commvault's Japanese Customers is 7am to 6pm in the time zone in which the CommServe resides.

\(^4\) New release version upgrades may be made available by Commvault
2.2.4 Technical Account Manager
The Technical Account Manager (TAM) is an enhanced support offering that allows the customer to have a localized resource (onsite and remote) who aligns a strategic business plan with a customer’s business objectives and the technology to accomplish those objectives.

These Services include (but are not limited to):
- Fulfill the role of “voice of the customer” in Commvault meetings, and the technical “voice of Commvault” in customer meetings (ongoing)
- Communicate proactive monitoring metrics to customer, including if thresholds met or exceeded and the potential impact on the business (Quarterly)
- Identify risks in the environment as it relates to data management operations
- Help executing the technical business plan in accordance with customer policies and procedures
- Fractional TAM Options (20% or 50%): Onsite/Remote presence with the customer (to be scheduled with the TAM, max number of days as per fraction purchased, dependent on agreed requirements)
- Dedicated TAM Option: Full time technical consultant to ensure the operational stability and value realization of your Commvault environment
- Escalated Critical Ticket Management – work with development directly on critical issues which are affecting business operations
- Work in tandem with the SAM on any support needs

Note: The TAM (TAM-20) is typically assigned five customers and can dedicate up to 20% of service time (throughout the service contract) to each customer. This service time is reviewed with assigned customers on a regular basis in order to determine the frequency and type of coverage (onsite or remote) needed to ensure the customer receives the maximum value out of the TAM Program. Please note that the 20% service time is a guideline and doesn’t imply that the customer is guaranteed 20% time nor can customers accumulate service time from month to month. If the customer desires guaranteed focus for a specified time from a TAM, beyond what is included with the base offering, they can purchase options for a fully or partially dedicated (i.e., 100% or 50%) TAM.

2.2.5 Enterprise Support Program (ESP)
Commvault’s Enterprise Support Program is Commvault’s most comprehensive support offering and is designed to provide strategic World Class Technical Management for all aspects of our customers’ Enterprise Data Management Solutions. We partner fully with our customers to enable success, and to provide business stakeholders with the highest level of customer satisfaction, all while safeguarding technology investments and intellectual property.

Severity Level Agreement Targets
Resources work towards the achievement of SLAs as per the targets outlined below in section 2.2.6
- Severity 0 (Zero) designed to support Enterprise Data Centers

Customer Support Engineer (CE)
The CE works to provide answers, solutions or a work-around for Enterprise Support Program customer Commvault issues.
The CE:
- Takes responsibility to accept, analyze, resolve or escalate new issues
- Manages issues using Enterprise Support Program Service Level Agreements
- Prioritizes all ESP issues before all non-ESP clients
- Keeps a current issue status and advises client and SAM of regular updates to the status

Support Account / Technical Account Manager (SAM / TAM)
The Enterprise Support Program is a joint collaboration with the Support Account Manager (SAM) and Technical Account Manager (TAM). The following are the roles and responsibilities for each under the ESP to ensure continued success:

Support Account Manager (SAM)
The SAM works to ensure SLA success, provide reporting, and manage escalation and critical care instances.
- Single point of contact owning the overall support experience
- Overall management of support status – includes all tickets and metrics associated with ticket history
- Hosts Weekly Support Calls and provides status updates
- Deliver Quarterly Business Reviews – metrics/business reviews
- Working with the customer to understand the business requirements and stated Service Level Agreements (SLAs) (Reviewed for both Commvault and customer's internal SLAs to ensure they are achievable metrics for success)
- Generation and Review of support ticket history and analysis during the Quarterly Business Reviews
- Yearly Briefings – Executive and/or Technical. Work with TAM on strategic agenda
- Work closely with the TAM for any onsite technical requirements/assistance
- Work closely with the TAM to identify training opportunities for customer personnel

Technical Account Manager (TAM)
The ESP includes assignment of a TAM (20% percent coverage) to partner with our customers to understand the customer’s business objectives. The TAM provides proactive and reactive guidance to mitigate risk and reduce time to resolution by aligning key technologies and resources to those objectives. The ESP TAM is a TAM-20, typically assigned five customers and may dedicate up to 20% of service time (throughout the service contract) to each customer. This service time is reviewed with assigned customers on a regular basis in order to determine the frequency and type of coverage (onsite or remote) needed to ensure the customer receives the maximum value out of the Enterprise Support Program. Please note that the 20% service time is a guideline and doesn’t imply that the customer is guaranteed 20% time nor can customers accumulate service time from month to month. If the customer desires guaranteed focus for a specified time from a TAM, beyond what is included with Enterprise Support, they can purchase options for a fully or partially dedicated (100% or 50%) TAM as described in the TAM Offering.
- Fulfill the role of “voice of the customer” in Commvault meetings, and the technical “voice of Commvault” in customer meetings (ongoing)
- Communicate proactive monitoring metrics to customer, including if thresholds are met or exceeded and the potential impact on the business (Quarterly)
- Identify risks in the environment as it relates to data management operations
- Help executing the technical business plan in accordance with customer policies and procedures
- Fractional TAM Options (20% or 50%): Onsite/Remote presence with the customer (to be scheduled with the TAM, max number of days as per fraction purchased, dependent on agreed requirements)
- Dedicated TAM Option: Full time technical consultant to ensure the operational stability and value realization of your Commvault environment
- Escalated Critical Ticket Management – work with development directly on critical issues which are affecting business operations
- Work in tandem with the SAM on any support needs

Enterprise Service Credits

• Service credit for Commvault Services. E.g. Professional Services, RSE, Training, Personalization, etc.
• Credits can be used by customer or SAM (with customer agreement) during the period of the Enterprise contract. ESP Credits must be used in the same country as the location of the designated, main (named) location / home region.
• Availability of credits allows for prompt co-ordination to meet additional customer requirements, reducing procurement overhead at a time when speed may be critical
• Service credits are reset upon renewal, expire in 12 months from the date of purchase and not transferable between contract periods

Reporting
Working with the Enterprise Support Program’s Customer’s fiscal or operation calendar, the SAM will present data on quarterly activity:
• Commvault Cloud Metrics Reporting configured to provide customer with an overview of the CommCells(s) within your environment
• Weekly conference call with customer principals to discuss issue status and path to resolution
• Compiles and reports to customer management with the Monthly Executive Summary
  • Demonstrates SLA response and resolution success
  • Provides data trending
  ▪ Job counts*
  ▪ CommCell Health*
  ▪ License Usage and Forecasting*
• Reports on quarterly success for SLA response and resolution, and overall CommCell® trends*
• Provides a Quarterly Executive Summary (summary can be conducted onsite or remote, to meet the needs of the customers distributed global teams)

*Ability to enable ‘CommCell Diagnostics and Usage’ on your CommServe(s) required / Requires CommServe connectivity to port 443 for access and connectivity to the cloud.commvault.com hosted infrastructure.

Enterprise Metrics Reporting
Enterprise Metrics Reporting allows you to monitor the performance of all CommCell computers, gauge the storage capacity for backups, and predict the cost of data protection in your organization. Available reports include the Activity Report, Monthly Chargeback Report, CommCell Growth Report, and the Health Report.
Enterprise Support Customers receive access to Premium Metric Reports with no requirement to purchase additional Metrics licensing to access these reports. These reports are available for download from Commvault Cloud site. For more information, please contact your assigned Support Account Manager.
### 2.2.6 Service Levels Response and Resolution Target Matrix

#### Commvault

<table>
<thead>
<tr>
<th>PRIORITY TIERS</th>
<th>STANDARD SUPPORT</th>
<th>PREMIUM SUPPORT</th>
<th>PROACTIVE SUPPORT</th>
<th>ENTERPRISE SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEV0 (Catastrophic)</td>
<td>N/A</td>
<td>N/A</td>
<td>15 Minutes</td>
<td>15 Minutes</td>
</tr>
<tr>
<td>Response</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resolution/Workaround</td>
<td>N/A</td>
<td>N/A</td>
<td>12 Hours</td>
<td>12 Hours</td>
</tr>
<tr>
<td>SEV1 (Critical)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response</td>
<td>1 Hour</td>
<td>1 Hour</td>
<td>30 Minutes</td>
<td>30 Minutes</td>
</tr>
<tr>
<td>Resolution/Workaround</td>
<td>24 Hours</td>
<td>24 Hours</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>SEV2 (High)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response</td>
<td>2 Hours</td>
<td>2 Hours</td>
<td>1 Hour</td>
<td>1 Hour</td>
</tr>
<tr>
<td>Resolution/Workaround</td>
<td>72 Hours</td>
<td>72 Hours</td>
<td>72 Hours</td>
<td>72 Hours</td>
</tr>
<tr>
<td>SEV3 (Medium)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response</td>
<td>3 Hours</td>
<td>3 Hours</td>
<td>3 Hours</td>
<td>3 Hours</td>
</tr>
<tr>
<td>Resolution/Workaround</td>
<td>20 Days</td>
<td>20 Days</td>
<td>10 Days</td>
<td>10 Days</td>
</tr>
<tr>
<td>SEV4 (Low)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response</td>
<td>4 Hours</td>
<td>4 Hours</td>
<td>4 Hours</td>
<td>4 Hours</td>
</tr>
<tr>
<td>Resolution/Workaround</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### 2.2.7 Customer Support Quality Assurance

Commvault is committed to providing best in class technical support, and we drive our customer satisfaction through a variety of metrics to guide us to achieve that goal. Industry standard measurements of time to respond, first contact resolution and time to solve are cornerstones of our support model. Outside of internal objectives we proactively solicit feedback from our user base for each incident logged with Commvault support in the form of a survey. This survey includes a brief questionnaire along with a comments section to add remarks about our service quality. Each survey response is reviewed by support management and, in the event of an unsatisfactory survey response; we initiate an investigation into the source of customer’s dissatisfaction with the support experience. Support management will initiate a call with the customer to cover satisfaction issues that were brought to light in the survey. The outcome of that conversation is reviewed against existing support processes and adjustments are made, as needed. Commvault is committed to improving our products, and we are always open to customer suggestions and requests of ways we can best accomplish this. By providing reports regarding customer’s use of the software, including results, comments or suggestions to Commvault (collectively, the “Feedback”), customer agrees that Commvault may use and disclose the Feedback in any manner Commvault chooses, provided that Commvault ensures the confidentiality of customer’s identity at all times. Commvault acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Commvault shall own all intellectual property rights related to the Feedback and its use. For those customers that request to opt out of this product improvement process, Commvault notes this in each such customer’s Support Account.
3 Contacting Customer Support

Prior to contacting support, it is highly recommended that customers search for possible solutions via the Web on our Support Portal, “Maintenance Advantage” and/or load the latest service pack and updates. If the problem persists, collecting log files, along with having the latest Service Pack and updates installed, will help expedite the resolution of your issue. If these steps are not taken by you, this can cause longer resolution times.

Please be aware that Commvault Technical Support Management reserves the right to close a service call if repeated attempts to contact the end user over the course of three (3) business days have failed to yield a response without reason. If necessary, these Support Incidents can be referenced if a new call for the original incident is required.

Commvault offers three different methods of support:
1. Web Support – Self Service (Forum, Knowledge Base, Chat, Solution Engine, and more)
2. Web Support Submission
3. Telephone Support

3.1 Web Support – Self Service

Commvault’s Web Support is provided via our Support Portal called Maintenance Advantage (ma.commvault.com). Maintenance Advantage is provided to customers who have a current and active maintenance contract. If you meet this requirement and you do not have a Maintenance Advantage login and password please send an email to support@commvault.com and provide your CommCell-ID along with your contact information and you will be notified via email of your login and password within 24 - 48 hours.

Maintenance Advantage contains a set of powerful tools to enable Commvault software customers to optimize and maintain their deployments. The section includes:

- Knowledge Base
- Solution Engine
- Commvault’s Customer Forum
- Service Packs and Hotfix Update Downloads, when and if available
- Technical FAQs
- Tips and Techniques to achieve better performance
- Configuration and deployment guidelines
- Supported hardware and software compatibility matrixes
- Troubleshooting Guides, and other valuable resources
- Enterprise Support Dashboard
- Commvault Support Chat
3.2 Web Support Submission

Customers can submit an incident via the internet by logging into Maintenance Advantage and clicking on the Incident Management link. From this location customers can view, update, and close incidents.

Web-Submitted incidents are responded to using the following guidelines:

- **Severity 0 (CATASTROPHIC)* and Severity 1 - (CRITICAL)** incidents cannot be opened via the Maintenance Advantage website
- **Severity 2 (SEV2)** – 2 Hour Response
- **Severity 3 (SEV3)** – 3 Hour Response
- **Severity 4 (SEV4)** – Next Business Day
  *Only available to Proactive or Enterprise Support customers

Once the online form is submitted, a ticket will automatically be generated as well as email notification that will include the Ticket number and a link to upload logs via the HTTP Log up-loader. In the majority of the support cases, logs will be required in order to troubleshoot and analyze the problem reported. Uploading logs in a timely manner will help expedite the troubleshooting process.

3.3 Commvault Chat

Customers may leverage Chat and access quick information about their support accounts, an incident, and more. Chat is found on the Common Portal of Maintenance Advantage. Chat is utilized for the following:

- Documentation or Product Supportability questions
- Hardware Compatibility questions
- Questions on Reporting
- Questions regarding Commvault licensing
- Problems with Maintenance Advantage Sub Account Creation
- Contact information for your Commvault Sales Representative
- Incident Escalation
- Incident Follow up
- Incident Re-Assignment
- Questions about Log and Database uploads

If your subject is of a break fix or technical nature please create an incident or, for Critical Incidents, please contact Customer Support using your local Technical Support hotline number.
### 3.4 Telephone Support

Commvault has four Main Global Customer Support locations; Tinton Falls, New Jersey; Reading, UK; Sydney, Australia; and Beijing, China. The Commvault Technical Assistance Centers are staffed by highly skilled professionals who are available 24 hours a day / 7 days a week (based on your warranty and contract support hours).

<table>
<thead>
<tr>
<th>NORTH AMERICA</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Toll Free #</td>
<td>(877) 780-3077</td>
<td></td>
</tr>
<tr>
<td>Direct Toll #</td>
<td>(732) 571-2160</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LATIN AMERICA</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>0-800-892-2288</td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>01800-710-2063</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>01-800-681-1581</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>EUROPE, MIDDLE EAST &amp; AFRICA (EMEA)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>0800-79392</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>8088-9260</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>0800-918893</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>0800-1012330</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>1-800-608178</td>
<td></td>
</tr>
<tr>
<td>Israel</td>
<td>1-809-494177</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>0800-782147</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>0800-0227402</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>800-11-985</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>800-8-14516</td>
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</tr>
<tr>
<td>Russia</td>
<td>8-800-100-9423</td>
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</tr>
<tr>
<td>Saudi Arabia</td>
<td>800-8-110540</td>
<td></td>
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<tr>
<td>South Africa</td>
<td>080-9-81256</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>0900-991600</td>
<td></td>
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<tr>
<td>Sweden</td>
<td>0200-896316</td>
<td></td>
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<tr>
<td>Switzerland</td>
<td>0800-836023</td>
<td></td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>8000-35770005</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0800-9171424</td>
<td></td>
</tr>
<tr>
<td>Other EMEA Countries</td>
<td>+441189522030</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ASIA-PACIFIC &amp; JAPAN (APJ)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>1300 368 528</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>1800-419-2951</td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>040-6654-0300</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>001-803-015-205-0066</td>
<td></td>
</tr>
<tr>
<td>Korea</td>
<td>0120-938-003</td>
<td></td>
</tr>
<tr>
<td>Malaysia</td>
<td>00-308-13-1763</td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>0800 002 032</td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>800-101-2206</td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>001-800-13-204-2904</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHINA</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>400-818-5908</td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
<td>800-906-128</td>
<td></td>
</tr>
<tr>
<td>Taiwan</td>
<td>00801-14-7127</td>
<td></td>
</tr>
</tbody>
</table>

#### 3.4.1 Submitting an Incident

When contacting support, customers should be prepared to provide the following information. Failure to provide this information can result in delays in the processing of your incident.

- User name and Contact Information
- CommCell ID
- Company Name
- Description of the problem
- Agent type, Version and Update Level
- Any other pertinent information such as failure reason and time of failure

Severity levels are mutually agreed upon between customer and support representative. (See: Severity Level Definitions in section 3.7). For Severity 1-Critical issues, customer must provide valid business case reason for a Severity 1-Critical call classification.
3.4.2 **Language Support**
Commvault provides its primary support activities in English with support assistance available for both localized support within our Support Centers and translation support for phone and remote support activities. Elements of Commvault's Web Support infrastructure include localized language views for non-English speaking customers. Customers should designate their preferred language on their Maintenance Advantage profile. Chinese speaking customers are serviced locally by our Beijing Support Center in native language.

3.4.3 **Solution Engine**

All incidents submitted to Commvault Support are ingested into our solution engine which will return results based on classification and text content. Our solution engine seeks to return results that have a 90% or greater chance of solving your problem. The results will come in several forms such as recommended hotfix, knowledge base article, documentation etc.

Results for the Solution Engine are returned in two different methods depending on how the incident is logged with support.

**Web-submitted:** Solution Engine results are presented after the incident details have been filled out and submitted via our online incident form. Each result will include “Did this solve your issue? **Yes** or **No**” response links which can be clicked there or upon returning to the open incidents page.

**Hotline/Phone submission:** Solution Engine results are sent via email after the incident details have been collected by our Frontline Engineer with a subject of ‘Possible Solution detected for incident’. At the conclusion of creating your incident our Frontline Engineer will inform you that a possible solution(s) has been detected and to please follow the steps provided within our email. Included in that message is solution content and “Did this solve your issue? **Yes** or **No**” response links which can be clicked there or upon returning to your open incidents page.

**Note:** If a solution is detected that incident will be placed into a status of “Waiting for result feedback” for a period of 24 hours or until a Yes/No response has been submitted. If at any point within that time the No option is selected, that incident will be immediately routed to an engineer for service under the SLA guidelines determined by severity. If Yes has been selected, that incident will be closed and the corresponding solution noted as its resolution.

3.5 **Service Packs and Hotfix Updates**

Customers can download Service packs and hotfixes via Maintenance Advantage. Our Service Packs are a roll up of all released updates up to the release date of the most current Service Pack. Hotfixes are fully certified updates that are not part of the last Service Pack. Commvault notes that these updates are offered on a “if-and-when available” basis only and do not follow any specific release schedule.

3.6 **Alerts and Notifications**

In order for customers to receive alerts they must edit their Maintenance Advantage user profile. There are two methods to receive alerts, one manual via ad hoc alerts sent by Technical Support or automated alerts via setting in your user profile.

**Manual Alert Notifications:** You can subscribe yourself to these alerts by selecting **Yes** on the Receive Update Alert Messages portion of the profile. Once you choose to receive alerts please make sure the Alert Distribution email field contains the email to which you wish to send these reports. We recommend creating an alias distribution address so that more than one person can be notified such as a primary and a backup.

**Automated Alert Notifications:** The automated alert notification feature will automatically send notifications on what you selected. You can select to receive Critical Alerts, Service Pack Alerts and/or Critical Updates only. You will then need to select the frequency either weekly or monthly and the day of the week you wish to receive those alerts. These alerts will send notification on updates posted since the last notification.

3.7 **Severity Level Definitions**

**Severity Level Definitions and Examples:**

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-Catastrophic</td>
<td>This severity level is reserved solely for Commvault Enterprise Support or Proactive Support Customers. This severity is used to indicate that all Commvault components are inoperable and no data movement operations are possible. Examples of SEV0-Catastrophic incidents are:</td>
</tr>
<tr>
<td>Proactive &amp; Enterprise Only</td>
<td>Complete outage to CommServe. Multiple Server outages/rebuilds issues.</td>
</tr>
<tr>
<td></td>
<td>Disaster Recovery Event (not a DR Test)</td>
</tr>
<tr>
<td>1-Critical</td>
<td>This severity should be used to indicate that a major component is down or having a serious problem that it is impacting business. Examples of SEV1-Critical incidents are:</td>
</tr>
<tr>
<td></td>
<td>CommServe® is not functioning, and server backups or restores are not possible</td>
</tr>
<tr>
<td></td>
<td>Mission Critical Database Restores (Exchange, SQL, Oracle, Informix etc.) impacting customers’ business</td>
</tr>
<tr>
<td></td>
<td>Mission Critical Server Restore/Rebuild impacting customers business</td>
</tr>
<tr>
<td>2-High</td>
<td>This severity should be used to indicate that a major component has problems that degrade the ability to meet the needs of the business. Examples of SEV2-High incidents are:</td>
</tr>
<tr>
<td></td>
<td>Critical Server Backup failures</td>
</tr>
<tr>
<td></td>
<td>Directory/Folder and File level Restore failures</td>
</tr>
<tr>
<td>3-Medium</td>
<td>This severity should be used to indicate intermittent problems that do not impact the immediate production needs of the business. Examples of SEV3-Medium incidents are:</td>
</tr>
<tr>
<td></td>
<td>Client installation issues</td>
</tr>
<tr>
<td></td>
<td>Media Management issues</td>
</tr>
<tr>
<td></td>
<td>Operational problems</td>
</tr>
<tr>
<td>4-Low</td>
<td>This severity is used to report a defect or inconsistency in the product or request an enhancement to the product.</td>
</tr>
</tbody>
</table>

3.8 **Problem Escalation:**

This section describes the actions that will be taken towards a resolution of Severity 1-Critical issues that are not resolved, and/or where no progress is being made nor a workaround provided within the response target goal time:

- A Tier 2 Engineer will be assigned to manage and coordinate efforts to work towards a resolution. Managers from the following departments will be notified: Technical Support, Engineering, Sales and Regional Technical Services.
- The Tier 2 Engineer will coordinate a conference call with the user and all necessary personnel from Support and Engineering departments to discuss the viability of providing a workaround until a permanent solution can be achieved. Regular updates on the progress of the issue will be provided to the user. All reasonable efforts to resolve the issue remotely will be taken, such as remote access to the problem site, replication of the problem in a support lab, or utilization of information gathered through the installation of diagnostic updates. The majority of problems are resolved remotely using phone support along with remote access tools.
- If all remote troubleshooting attempts are deemed unsuccessful, then an on-site engineer can be provided until the problem is resolved. The on-site engineer fees would comprise of the current daily billable rates in accordance with the GSA Pricelist. Ordering Activity Licensee agrees to pay any travel expenses for the on-Site engineer in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

3.9 Incident Escalation:
While Commvault support makes every effort to meet our customer’s expectations, occasionally a situation may arise where an incident may need to be expedited, or criticality may have changed. In cases where you feel additional attention or further escalation is required, any of the following processes may be followed:

- Escalate Online: From our Maintenance Advantage Support Portal’s Active Incidents list, open the incident and select the Update Activity with ‘Yes, please ask management to review my incident’.
- Escalate via Email Link: Click on the Support Management Escalation link in your incident’s email footer.
- Escalate via Mobile Advantage App: From the Open Incidents view, select the incident and click Mgmt. Review.
- Escalate via Phone: Contact the Customer Support Hotline providing your incident-id number and ask to have the incident escalated. Please provide the reason for escalation so that the incident can be handled accordingly by our engineers.
- You may also request to speak with a Supervisor or Manager. In most cases a Supervisor or Manager will return your call within one hour. You will have the opportunity to explain the situation currently being faced and we will assist in getting the situation rectified.

Please refer to section 3.4 Telephone Support or online, for a list of Toll Free numbers to contact your local Support Center.
https://ma.commvault.com/Support/TelephoneSupport
4 Product Updates

Keeping Your Products Current
A current Commvault Maintenance Agreement entitles you to the latest versions\(^5\) of your licensed Commvault products, Service Packs, Maintenance Packs, hotfixes, and more.

Download Software Packages
Commvault makes all of its software packages available online. To access Commvault’s Software Suite, log into the Maintenance Advantage website and click Electronic Software Distribution, Service Pack or Additional Platform Support Packages under the Downloads and Packages tab. Different release versions are accessed by selecting the appropriate Software Version.

Download Software Updates
Commvault constantly enhances its products for resiliency and performance. Regular updates to your deployed Commvault environment ensures optimized operating efficiency for your CommCell(s) and minimizes the possibility of encountering an issue that has already been addressed in the Service or Maintenance Pack.

To check for available software updates (loose updates, Service Pack), log into the Maintenance Advantage website and click Software Updates under the Product Support tab. You can sort the list of Updates by Major Release and Product family.

Weekly Update Alert Notice
The Weekly Update Alert Notice delivers to you via email product information, update and upgrade notifications, as well as critical alerts that may require immediate attention. This information helps you get the most out of your Commvault investment by keeping you up to date. For more information, visit the URL noted below and update your User Profile for alerting:
https://ma.commvault.com/Profile/Editor

\(^5\) Release version upgrades are available per the terms of your active Maintenance Agreement
5 Support Entitlement and Maintenance Renewals

5.1 Support Entitlement

In order to receive maintenance and support services, including updates and upgrades, Customers must maintain the same level of active maintenance and support on all software licenses within their software configuration. Customers who do not have a maintenance agreement with Commvault will have limited access to technical resources. Commvault will respond on a Time & Material basis with "commercially reasonable effort", only upon receipt of email acceptance of payment by (Credit Card or Purchase Order) based off of the current billable rates on the GSA Pricelist.

5.1.1 Maintenance Renewals

Maintenance Agreements are renewed on an annual basis. Any changes to a Maintenance agreement must be made in writing. Contract change requests can be submitted via e-mail for the following locations:

US: servicecontracts@Commvault.com
Canada: servicecontractscan@Commvault.com
EMEA: servicecontractsemea@Commvault.com
APJ: apiservicecontracts@Commvault.com

5.1.2 Product Obsolescence

Commvault is committed to providing all customers with one (1) year advanced notification of the obsolescence date of any Commvault product. At the time a product is declared obsolete, Commvault will also notify all customers of any specific maintenance arrangements associated with any products that have been declared obsolete. Customers can view the list of obsolete products on the Web at https://ma.commvault.com/Support/ProductSupport
6 Product License Registration

6.1 Product Registration

After a successful installation of Commvault software, the Customer has thirty (30) days to notify Commvault and request a permanent License Key. If the Permanent License Key is not ordered within the 30 day period following installation, the Commvault software will cease to function. This occurs because the License Key used during the new Commvault Pilot deployment was temporary. The following outlines the processes required to request a Permanent License Key:

E-mail prodreg@Commvault.com for US and APAC-based Customers, prodreg-canada@Commvault.com, or Licensekey@Commvault.com for EMEA and India-based customers and provide the following:

- Company Name
- Contact Name with email and phone number
- CommCell-ID – This information can be obtained from the License Administration Window
- License Summary Report
- WINNTHOSTID – 8 character Hexadecimal version of the CommServe® IP address. (This information is necessary to ensure the correct IP address is obtained especially if multiple NIC cards are installed in the server)

Alternatively, the license activation process may be completed online at the following URL:
https://ma.commvault.com/Support/ProductRegistration

If for any reason the received Permanent License Key fails to apply, please check the following:

- If the number of licenses in the license key corresponds to the installed items in the license summary report
- If the WINNTHOSTID output corresponds with the CommServe ID of the license key.

If the above checks do not resolve the issue, please contact via email the appropriate license alias listed above with the following information:

- Company Name, Contact Name and Contact info
- CommCell-ID
- License summary report of the licenses used
- Was a pilot key used for installing the software (Y/N)
- Screenshot of the failure message at the moment the Permanent License Key is applied
Global Support and Services Resource Allocation

6.2 Worldwide Regional Locations

<table>
<thead>
<tr>
<th>Commvault Location</th>
<th>North America</th>
<th>Latin America</th>
<th>APJ</th>
<th>EMEA</th>
<th>China</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Support Center</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>Engineering</td>
<td>X</td>
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<tr>
<td>Management</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Commvault’s World Wide Headquarters is located in Tinton Falls, New Jersey, United States

6.3 Regional Technical Service Professionals and Resource Locations

<table>
<thead>
<tr>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Region (AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY, Mexico)</td>
</tr>
<tr>
<td>Central Region (AR, IA, IL, IN, KS, LA, MI, MN, MO, ND, NE, OK, SD, TX, WI)</td>
</tr>
<tr>
<td>Eastern Region (AL, CT, DE, FL, GA, KY, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Capital Region (Ottawa/Hull, Federal Government)</td>
</tr>
<tr>
<td>Western Region (British Colombia, Alberta)</td>
</tr>
<tr>
<td>Central Region (Ontario, Manitoba, Saskatchewan)</td>
</tr>
<tr>
<td>Eastern Region (Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh, Bhutan, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, South Korea, Vietnam, Philippines, Republic of Korea, Taiwan, Singapore, Thailand, Australia, New Zealand, Papua New Guinea</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMEA</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRANCE, SPAIN, ITALY, &amp; PORTUGAL</td>
</tr>
<tr>
<td>SOUTHERN EUROPE, MIDDLE EAST, &amp; AFRICA</td>
</tr>
<tr>
<td>UNITED KINGDOM &amp; IRELAND</td>
</tr>
<tr>
<td>GERMANY, SWITZERLAND &amp; AUSTRIA</td>
</tr>
<tr>
<td>BELGIUM, NETHERLANDS, LUXEMBOURG (BENELUX)</td>
</tr>
<tr>
<td>SWEDEN, NORWAY, DENMARK &amp; FINLAND</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
</tr>
</tbody>
</table>

| MIDDLE EAST |
## Resource Directory

### 7.1 Department and Contact Information

<table>
<thead>
<tr>
<th>Commvault Corporate Office</th>
<th>Tinton Falls, New Jersey 1-732-870-4000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commvault Technical Support</td>
<td>North America Toll-Free # (877) 780-3077</td>
</tr>
<tr>
<td></td>
<td>North America Direct Toll# (732) 571-2160</td>
</tr>
<tr>
<td></td>
<td>Brazil 0-800-892-2288</td>
</tr>
<tr>
<td></td>
<td>Columbia 01800-719-2063</td>
</tr>
<tr>
<td></td>
<td>Mexico 01-800-681-1581</td>
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<td></td>
<td>EMEA:</td>
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<td></td>
<td>Belgium 0800-79392</td>
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<td></td>
<td>Denmark 8088-9260</td>
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<td></td>
<td>France 0800-918893</td>
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<tr>
<td></td>
<td>Germany 0800-1012330</td>
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<td>Ireland 1-800-608178</td>
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<td>Israel 1-80-9494177</td>
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<td>Italy 0800-782147</td>
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<td>Netherlands 0800-0227402</td>
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<td>Norway 800-11-985</td>
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<td>Portugal 800-8-14516</td>
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<td>Russia 8-800-100-9423</td>
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<td>Saudi Arabia 8000-35770005</td>
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<td>South Africa 080-09-81256</td>
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<td></td>
<td>Spain 0900-991600</td>
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<td>Sweden 0200-896316</td>
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<td>Switzerland 0800-838023</td>
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<td></td>
<td>United Arab Emirates 8000-35770005</td>
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<td></td>
<td>United Kingdom 0800-9171424</td>
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<td></td>
<td>Other EMEA Countries +44-1189522030</td>
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<tr>
<td></td>
<td>APAC:</td>
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<tr>
<td></td>
<td>Australia 1300 368 528</td>
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<tr>
<td></td>
<td>China 400-818-5908</td>
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<tr>
<td></td>
<td>India 1800-425-2951</td>
</tr>
<tr>
<td></td>
<td>Japan 0120-938-003</td>
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<tr>
<td></td>
<td>Korea 00-308-13-1763</td>
</tr>
<tr>
<td></td>
<td>Malaysia 1-800-813-686</td>
</tr>
<tr>
<td></td>
<td>New Zealand 0800 002 032</td>
</tr>
<tr>
<td></td>
<td>Singapore 800-101-2206</td>
</tr>
<tr>
<td></td>
<td>Thailand 001-800-13-204-2904</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Product License Registration</th>
<th>North America/APAC: <a href="mailto:ProdReg@Commvault.com">ProdReg@Commvault.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>EMEA:</td>
<td><a href="mailto:Licensekey@Commvault.com">Licensekey@Commvault.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maintenance Advantage</th>
<th><a href="https://ma.commvault.com/">https://ma.commvault.com/</a></th>
</tr>
</thead>
</table>

| Service Contracts | US: servicecontracts@Commvault.com |
|                   | Canada: servicecontractscan@Commvault.com |
|                   | EMEA: servicecontractsemea@Commvault.com |
|                   | APJ: apiservicecontracts@Commvault.com |

| Training | North America: training@Commvault.com |
|          | EMEA: trainingeMEA@CommvaultEMEA.com |
|          | APJ: RegistrarANZ@Commvault.com |

| Professional Services | US: PSUSA@Commvault.com |
|                       | Canada: PSCanada@Commvault.com |
|                       | EMEA: PSEMEA@Commvault.com |
|                       | APJ: PSAustralia@Commvault.com |

| Account Management Information | Contact Sales Representative |

| Invoice and Product Questions | Contact Sales Representative |
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Coupa Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order GPG 4800.2I, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 9901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**


Page 379
MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement ("Agreement") is between Coupa Software Inc. ("Coupa") and the Ordering Activity ("Customer"). This Agreement incorporates the Subscription Schedule, attached as Exhibit A, which describes the following operational matters of the Hosted Applications (as defined below): (1) technical support & update process; (2) service level agreement; and (3) data security measures.

1. DEFINITIONS

1.1. ‘Affiliate’ means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; and "control" for the purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity, provided that any such Affiliate shall be deemed an Affiliate only for so long as such control lasts.

1.2. "Confidential Information" means all confidential and proprietary information of a disclosing party or any of its Affiliates disclosed by or on behalf of such party to the receiving party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including Customer Data, business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding anything to the contrary, the Hosted Applications and Coupa Platform are deemed to be Confidential Information of Coupa. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party without restriction prior to its disclosure by the disclosing party and without breach of any obligation owed to the disclosing party; (iii) was independently developed by the receiving party without either use of or reference to any Confidential Information or breach of any obligation owed to the disclosing party; or (iv) is received from a third party without restriction and without breach of any obligation owed to the disclosing party.

1.3. "Coupa Platform" means any software and hardware that enables Coupa to provide Customer with access to and use of the Hosted Applications as contemplated by this Agreement.

1.4. "Customer Data" means any data, information or material provided or submitted by Customer or on behalf of Customer to the Coupa Platform in the course of using the Hosted Applications.

1.5. "Documentation" means the Coupa product documentation relating to the operation and use of the Hosted Applications, including technical program or interface documentation, operating instructions, update notes, and support knowledge base, as made available and updated from time to time by Coupa.

1.6. "Hosted Application(s)" means applications and associated content (as identified on an Order Form) to be provided by Coupa to Customer as a subscription service and made accessible on a website designated by Coupa.

1.7. "Order Form" means a purchase order mutually executed by the parties evidencing the purchase of subscriptions to the Hosted Applications specifying, among other things, the Subscription Term, the number of Users, the applicable fees, and the billing period as agreed to between the parties. Each Order Form, once mutually executed, shall be governed by and become part of this Agreement, and is hereby incorporated by this reference.

1.8. "Protected Health Information" has the meaning given to it in the Health Insurance Portability and Accountability Act ("HIPAA").

1.9. "Regulated Information" means, where applicable, (a) from the perspective of EU law: special categories of data as defined in Article 8 of EU Directive 95/46/EC or Article 9 of the GDPR; and/or (b) from the perspective of US law: an individual’s first name and last name (or first initial and last name) in combination with any one or more of the following data elements that relate to such individual: (i) Social Security number; (ii) driver’s license number or stateissued identification card number; or (iii) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual’s financial account.

1.11. "Subscription Term" means the period(s) during which Customer is authorized to use the Hosted Applications pursuant an Order Form.

1.12. "Support" means the Coupa technical support as specified on the Order Form in accordance with the terms in Exhibit A.

1.13. "Updates" means Coupa’s updates of the Hosted Applications for repairs, enhancements or new features applied by Coupa to Customer’s instances, including updates to the Documentation as a result of such updates, at no additional fee during the Subscription Term. Updates shall not include additional functionality or upgrades to the Hosted Applications that Coupa requires a separate charge from the Customer for customers generally.

1.14. "Users" means employees of Customer and its Affiliates and their representatives, consultants, contractors, subcontractors, or agents who are authorized to use the Hosted Applications and have been supplied unique user identifications and passwords by Customer.

2. COUPA’S OBLIGATIONS

2.1. Provision of the Hosted Applications. Coupa will make available to Customer, and Customer is authorized to use, the Hosted Applications during the Subscription Term as set forth in an applicable Order Form for its and its Affiliates’ internal business purposes in accordance with the Documentation.

2.2. Support, Uptime & Updates. Coupa shall: (i) provide the level of support specified in the Order Form in accordance with Exhibit A; (ii) provide Updates at no additional charge as part of Customer’s subscription during the Subscription Term in accordance with Exhibit A; and (iii) make the Hosted Applications available in accordance with Exhibit A.

2.3. Security. Coupa shall maintain a written information security program of policies, procedures and controls ("Security Program") governing the processing, storage, transmission and security of Customer Data. The Security Program as of the Effective Date is set forth in Exhibit A. The Security Program shall include industry standard practices designed to protect Customer Data from unauthorized access, acquisition, use, disclosure, or destruction. Coupa may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, provided that any such update does not materially reduce the overall level of security provided to Customer as described herein.

2.4. Breach Notification. Unless notification is restricted by law, Coupa shall report to Customer’s support contacts designated in Coupa’s customer support portal ("Support Portal") any unauthorized acquisition, access, use, disclosure or destruction of Customer Data ("Breach") promptly without undue delay after Coupa determines that a Breach has occurred. Unless prohibited by law, Coupa shall share information about the nature of the Breach that is reasonably requested by Customer to notify affected individuals, government agencies and/or credit bureaus. Customer has sole control over the content of Customer Data that it enters into.
the Coupa Platform and is responsible for determining whether to notify impacted individuals and the applicable regulatory bodies or enforcement commissions and for providing such notice.

2.5. Audit Report. During the Subscription Term, except as stated otherwise on the Order Form, Coupa shall engage at its expense, an independent accounting firm to conduct an audit of Coupa’s operations with respect to the Hosted Applications in accordance with the Statement on Standards for Attestation Engagements No. 18 (the "SSAE 18"), and have such accounting firm issue SSAE 18, SOC 1 Type 2 and SOC 2 Type 2 reports (or substantially similar report of a successor auditing standard in the event the SSAE 18 auditing standard is no longer an industry standard) (the "Auditor’s Report"), which shall cover Coupa’s security policies, procedures, and controls. Upon Customer’s request, Coupa shall provide Customer and its external auditors with a current copy of such Auditor’s Report, provided that such report shall be deemed Confidential Information of Coupa.

2.6. Insurance. Coupa shall maintain during the term of this Agreement: (a) Commercial General Liability Insurance with minimum limits of US$1,000,000 combined single limit and combined bodily injury and property damage per occurrence and US$3,000,000 dollars in the aggregate; (b) Commercial Automobile Liability Insurance providing coverage for owned, hired, and non-owned vehicles used in connection with this Agreement in an amount of not less than US$1,000,000 per accident combined single limit for bodily injury and property damage; (c) Umbrella Liability providing excess liability coverage in the minimum amount of US$5,000,000.00 per occurrence, to supplement the primary coverage provided in the policies listed above; (d) Professional Liability Insurance (Errors and Omissions Insurance) with minimum limits of US$5,000,000.00; (e) Workers Compensation Insurance covering Coupa employees pursuant to applicable state laws, and at the maximum limits statutorily required for each such state; and (f) Commercial Crime Insurance including coverage for loss or damage resulting from theft committed by the Coupa’s employees, acting alone or in collusion with others, and coverage for computer crime, with a minimum per event and annual aggregate limit of US$2,000,000. Upon request, Coupa shall promptly furnish Customer with a certificate evidencing the coverages set forth above.

3. CUSTOMER’S USE OF THE HOSTED APPLICATIONS

3.1. User Accounts. Customer is responsible for activity occurring under its User accounts and shall ensure that it and its Users abide by all local, state, national and foreign laws, treaties and regulations applicable to Customer’s use of the Hosted Applications. Customer shall: (i) notify Coupa promptly of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) notify Coupa promptly and use reasonable efforts to promptly stop any unauthorized use, copying, or distribution of the Hosted Applications that is known or suspected by Customer or its Users; (iii) not impersonate another Coupa user or provide false identification information to gain access to or use the Hosted Applications or Coupa Platform; and (iv) restrict each User account to only one User at a time.

3.2. Restrictions. Customer shall not (i) license, sublicense, sell, resell, transfer, rent, lease, assign (except as provided in Section 11.3 (Assignment)), distribute, disclose, or otherwise commercially exploit or make available to any third party the Hosted Applications; (ii) modify, copy or make derivative works based upon the Hosted Applications; (iii) “frame” or “mirror” the Hosted Applications on any other server or device; (iv) access the Hosted Applications for any benchmarking or competitive purposes or use the Hosted Applications for application service provider, timesharing or service bureau purposes, or any purpose other than its own internal use, (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Hosted Applications, except to the extent reverse engineering restrictions are prohibited by applicable reverse engineering restrictions are prohibited by applicable law), (vi) remove, obscure or modify a copyright or other proprietary rights notice in the Hosted Applications; (vii) use the Hosted Applications to send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material that violates third party privacy rights; (viii) use the Hosted Applications to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious or disrupt the security, integrity or operation of the Hosted Applications or the Coupa Platform; (ix) attempt to gain or permit unauthorized access to the Hosted Applications or its related systems or networks; (x) use the Hosted Applications other than in compliance with all applicable laws and regulations or (xi) permit or assist any other party (including any User) to do any of the foregoing.

3.3. User Reassignment. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require use of the Hosted Applications. Unless otherwise specified in the relevant Order Form, the replacement User shall be under the same Subscription Term of the original User.

3.4. Additional Users. Additional Users may be purchased pursuant to the parties signing an Order Form and unless otherwise specified in the relevant Order Form, the Subscription Term of additional Users shall be concurrent with the Subscription Term in effect at the time the additional Users are added.

3.5. Protected Information. The intended purpose of the Hosted Applications is to optimize Customer’s corporate spend management processes and Customer acknowledges and agrees that use of the Hosted Applications does not require Customer to provide any Protected Information to or through the Hosted Applications or Coupa Platform. Protected Information should not be stored by any Hosted Applications or Coupa Platform, and Coupa shall have no liability to Customer or its suppliers, Users or any other party related to any Protected Information. Customer shall not (and shall ensure that its suppliers and Users do not) upload, provide or submit any Protected Information to the Hosted Applications or Coupa Platform.

3.6. Third Party Interactions.

(a) No Supplier Fees. Each party agrees that it shall not charge Customer’s suppliers for the right to interact with Customer through the Coupa Platform.

(b) Supplier Interactions. During the Subscription Term, Customer may enter into correspondence with and purchase goods and/or services from suppliers on or through the Hosted Applications. Any such activities and associated terms are solely between Customer and the applicable third party supplier. Customer agrees that Coupa shall have no liability, obligation or responsibility for any such correspondence or purchase between Customer and any such third party supplier.

4. RESERVED

5. PROPRIETARY RIGHTS

5.1. Coupa’s Intellectual Property Rights. As between Coupa and Customer, all rights, title, and interest in and to all intellectual property rights in the Hosted Applications and Coupa Platform (including all modifications and enhancements thereof) are and shall be owned exclusively by Coupa notwithstanding any other provision in this Agreement or Order Form. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Hosted Applications or Coupa Platform. The Coupa name, logo and product names associated with the Hosted Applications or Coupa Platform are trademarks of Coupa, and no right or license is granted to use them. All rights not expressly granted to Customer are reserved by Coupa. Coupa alone shall own all rights, title and interest in and to any 2 and SOC 2 Type 2 reports (or substantially similar report of a successor auditing standard in the event the SSAE 18 auditing standard is no longer an industry standard) (the “Auditor’s Report”), which shall cover Coupa’s security policies, procedures, and controls. Upon Customer’s request, Coupa shall provide Customer and its external auditors with a current copy of such Auditor’s Report, provided that such report shall be deemed Confidential Information of Coupa.

5.2. Customer Data. As between Customer and Coupa, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual
property ownership of and right to use all Customer Data, and hereby warrants that that it has and will have all rights and consents necessary to allow Coupa to use all such data as contemplated by this Agreement. Customer hereby grants to Coupa a royalty-free, fully-paid, non-exclusive, non-transferable (except as set forth in Section 11.3 (Assignment)), sub-licensable, worldwide right to use and process Customer Data solely for the purpose of providing to Customer the Hosted Applications and any other activities expressly agreed to by Customer in a written document signed by both parties.

6. CONFIDENTIAL INFORMATION

6.1. Receiving party shall not disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement, except with the disclosing party’s prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall provide the disclosing party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at disclosing party’s cost, if the disclosing party wishes to contest the disclosure, and any information so disclosed shall continue to be treated as Confidential Information for all other purposes.

6.2. Reserved.

6.3. Use of Aggregate Data. Customer agrees that Coupa may collect, use and disclose quantitative data derived from the use of the Hosted Applications for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify Customer or its Users.

7. WARRANTIES

7.1. Coupa’s Obligations. Coupa warrants that during the Subscription Term (i) Customer’s production instances of the Hosted Applications shall materially conform to the Documentation and (ii) that the functionality of the Hosted Applications at the time of the Order Form shall not materially decrease during the Subscription Term.

7.2. Procedure. To submit a warranty claim under this Section, Customer shall (1) reference this Section; and (2) submit a support request to resolve the non-conformity as provided in the Subscription Schedule. If the non-conformity persists without relief more than thirty (30) days after written notice of a warranty claim provided to Coupa under this Section, then Customer may terminate the affected Hosted Applications and Coupa, as its sole liability in connection with a breach of this warranty, shall refund to Customer any prepaid subscription fees covering the remaining of the Subscription Term of the affected subscription after the effective date of termination. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to any modification of or defect in the Hosted Applications that is made or caused by someone other than Coupa (or someone acting at Coupa’s direction).

8. INDEMNIFICATION

8.1. Coupa’s Obligations. Subject to this Agreement, Coupa shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, or demand (each a “Claim”) that alleges the Hosted Applications used in accordance with this Agreement and the applicable Order Form infringe any issued patent, copyright, trademark or misappropriation of any trade secret of, such third party; and (ii) pay any court-ordered award of damages or settlement amount which may include any expense, liability, loss, damage, costs or reasonable attorneys’ fees, each to the extent payable to a third party, to the extent arising from such Claims. Notwithstanding the foregoing, if Coupa reasonably believes that Customer’s use of any portion of the Hosted Applications is likely to be enjoined by reason of any Claims then Coupa may, at its expense and in its sole discretion: (i) procure for Customer the right to continue using the Hosted Applications; (ii) replace the same with other products of substantially equivalent functions and efficiency that are not subject to any Claims of infringement; or (iii) modify the applicable Hosted Applications so that there is no longer any infringement, provided that such modification does not materially and adversely affect the functional capabilities of the Hosted Applications as set out herein or in the applicable Order Form. If (i), (ii), and (iii) above are not available on commercially reasonable terms in Coupa’s judgment, Coupa may terminate the affected Hosted Applications and refund to Customer the fees paid by Customer covering the remaining portion of the applicable Subscription Term for the affected Hosted Applications after the date of termination. The foregoing indemnification obligation of Coupa shall not apply: (1) if the Hosted Application is modified by any party other than Coupa (or someone acting at Coupa’s direction), but solely to the extent the alleged infringement is related to such modification; (2) the Hosted Application is combined with other non-Coupa products, applications, or processes not authorized by Coupa, but solely to the extent the alleged infringement is related to such combination; (3) to the extent the Claim arises in connection with any unauthorized use of the Hosted Application, or use that is not in compliance with all applicable laws and related Documentation; (4) to any third party products, processes or materials that are not provided by Coupa; or (5) to any Claims arising as a result of the content of the Customer Data. THIS SECTION SETS FORTH COUPA’S SOLE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT. Nothing contained in this Agreement shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

8.2. Reserved.

8.3. Process. Coupa’s indemnity obligations are subject to the following: (i) Customer shall promptly notify Coupa in writing of any Claims; and (ii) Customer shall cooperate fully to the extent necessary at Coupa’s cost in such defense and settlement.

9. DISCLAIMER

9.1. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COUPA DOES NOT MAKE ANY OTHER REPRESENTATION, WARRANTY, OR GUARANTY, AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES PROVIDED OR OFFERED HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES PROVIDED TO CUSTOMER HEREUNDER ARE PROVIDED STRICTLY ON AN “AS IS” BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10. TERM; TERMINATION

10.1. Term. The Agreement commences on the Effective Date and continues until all Order Forms subject to this Agreement have expired or terminated, unless this Agreement is earlier terminated in accordance with this Section 10. User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein.

10.2. Reserved.

10.3. Transition Services. Upon termination of the Agreement, at Customer’s election, Coupa shall provide transition services to facilitate the orderly and complete transfer of the Customer Data to Customer or to any replacement provider designated by Customer (“Transition Services”), provided that the scope and fees of the Transition Services shall be mutually agreed to by the parties in an Order Form prior
to commencing Transition Services. Notwithstanding the provisions of this subsection, in no event shall Coupa be required to disclose any of its Confidential Information or provide a license under any of its intellectual property to Customer or any third party as part of the Transition Services. For the avoidance of doubt, Customer shall continue to pay the subscription fees for the use of the Hosted Applications during the transition period set forth in an applicable Order Form.

10.4. Survival. Upon expiration or termination of the Agreement, Sections 1 (Definitions), 3.2 (Restrictions), , 5 (Proprietary Rights), 6 (Confidential Information), 8 (Indemnification), 9 (Disclaimer), 10 (Term; Termination), and 11 (General Provisions) of this Agreement shall survive.

11. GENERAL PROVISIONS
11.1. Compliance with Laws and Export Control. Each party shall comply with all applicable laws and government regulations, including the export laws and regulations of the United States and other applicable jurisdictions, in connection with providing and using the Hosted Applications and/or Coupa Platform. Without limiting the foregoing, (i) each party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not, and shall ensure that Users do not violate any export embargo, prohibition, restriction or other similar law in connection with this Agreement.

11.2. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.4. Reserved.
11.5. Entirety. The Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and applicable Order Forms, comprises the entire agreement between Customer and Coupa and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. In the event of any conflict between this Agreement and the Order Form, the Order Form shall govern. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. Customer agrees that Customer’s purchase of any subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Coupa with respect to future functionality or features. No joint venture, partnership, employment, or agency relationship exists between Customer and Coupa as a result of the Agreement or use of the Hosted Applications or Coupa Platform. The failure of a party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision.

11.6. Force Majeure. This Agreement is subject to FAR 52.212-4 (f) Excusable delays. (JUN 2010).

EXHIBIT A - SUBSCRIPTION SCHEDULE

EXHIBIT A-1: TECHNICAL SUPPORT
The following describes the technical support services ("Technical Support") Coupa shall provide for the support level purchased by Customer ("Support Level") as stated on the Order Form. The following terms may be updated from time to time, however, for each Order Form, the terms effective as of the execution of the Order Form shall apply for the duration of the applicable Subscription Term.

1. Scope. The purpose of Technical Support is to address defects in the Hosted Applications that prevent them from performing in substantial conformance with the applicable Documentation. A resolution to such a defect may consist of a fix, workaround or other relief reasonably determined by Coupa’s Technical Support staff.

2. Online Support Portal. The Support Portal includes an online knowledge base, best practices for use of the Hosted Applications, and a portal for the Designated Support Contacts (as defined below) to submit support tickets.

3. Live Phone Support. Coupa personnel is available to provide Technical Support to Customer, depending on the Support Level (as defined below) purchased by Customer.

4. Severity Levels. Each support ticket shall be categorized by Customer into one of the following severity levels.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Severe error that results in the Hosted Applications experiencing complete unavailability and halting transactions with no workaround.</td>
</tr>
<tr>
<td>Level 2</td>
<td>Serious error that results in a major function of the Hosted Applications suffering a reproducible problem causing either major inconvenience to Users or consistent failure in a common functionality.</td>
</tr>
<tr>
<td>Level 3</td>
<td>Error that results in a common functionality experiencing an intermittent problem or a consistent failure in a less common functionality.</td>
</tr>
<tr>
<td>Level 4</td>
<td>Service requests such as sandbox refreshes, SSO setups, and other how-to type of questions.</td>
</tr>
</tbody>
</table>

5. Support Levels

<table>
<thead>
<tr>
<th>Support Level</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
</tr>
</thead>
</table>

https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
6. **Customer Responsibilities**

(a) Customer shall designate no more than the number of Coupa Platform administrators ("Designated Support Contacts") set forth above who may contact and interact with Coupa in connection with Technical Support requests. Customer’s Designated Support Contacts shall answer questions and resolve issues as needed when they arise from other Users of the Hosted Applications. Customer’s Designated Support Contacts enter support request tickets, work through Technical Support issues with Coupa, and take action as needed to implement the resolution to the issue. Customer agrees that Coupa may communicate, and follow instructions to make changes to Customer Data and/or Customer’s instances, with its Designated Support Contacts via email, phone or through the Support Portal.

(b) Customer shall ensure that Customer’s Designated Support Contacts are trained on the use and administration of the Hosted Applications.

(c) Customer shall ensure that the name, contact and other information for these Designated Support Contacts are current in the Support Portal. Customer may replace Designated Support Contacts by updating the applicable information in the Support Portal, provided that at no time may Customer have more than the number of Designated Support Contacts permitted based on its Support Level.

7. **Support Exclusions**

Coupa is not required to provide resolutions for immaterial defects or defects due to modifications of the Hosted Applications made by anyone other than Coupa (or anyone acting at Coupa’s direction). Technical Support does not include professional services for implementation, configuration, integration or customization of a Hosted Application or custom software development, training or assistance with administrative functions.

8. **Update Process**

Coupa shall use commercially reasonable efforts to (1) monitor the Hosted Applications and related infrastructure for opportunities to address performance, availability and security issues; and (2) at Coupa’s discretion, deliver functionality enhancements to address customer and market requirements to improve such Hosted Applications based on Coupa innovation.

Coupa’s update and release process, as updated from time to time, is described at https://success.coupa.com/Success/Release_Management/01_Release_Types ("Update Process"). Customer shall upon notice comply with the Update Process and understands that not all Technical Support may be available if Customer does not comply with the Update Process and only the latest release of the Coupa Platform and Hosted Applications contains the most current features, availability, performance and security, including software fixes. Coupa is not responsible for product defects or security issues affecting the Hosted Applications or failure to meet the Uptime SLA (defined in Exhibit A-2) for Hosted Applications when Customer is not in compliance with the Update Process.

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**EXHIBIT A-2: SERVICE LEVEL AGREEMENT (SLA)**

1. If service outages result in a failure of any production instance of a Hosted Application to meet an uptime availability requirement of 99.8% over a calendar month ("Uptime SLA"), Customer’s sole and exclusive remedy shall be a service credit equal to the greater of:

   (a) Ten percent (10%) of the subscription fees set forth in the applicable Order Form for the applicable Hosted Application for that calendar month; or

   (b) The actual unavailability rate for that calendar month (as an example, if the Hosted Application has an uptime availability of 85% during a calendar month, then the service credit shall be fifteen percent (15%) of the applicable subscription fees for that calendar month).

2. The following events shall be excluded in calculating Uptime SLA:

   (a) Planned maintenance windows, which are described at https://success.coupa.com/Success/Release_Management/03_Maintenance_Windows; and

   (b) Emergency maintenance required to address an exigent situation with the Hosted Application or Coupa Platform that if not addressed on an emergency basis could result in material harm to the Hosted Application or Coupa Platform. Coupa shall provide advance notice of emergency maintenance via the Support Portal to the extent practicable.

   (c) Any unavailability caused by circumstances beyond Coupa’s reasonable control, including without limitation, unavailability due to Customer or its Users’ acts or omissions, a Force Majeure Event, Internet service provider failures or delays, failure or malfunction of equipment or systems not belonging to or controlled by Coupa.

Items (a) – (c) collectively, “Excused Downtime”.

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[Link to the document]
Coupa reserves the right to perform planned maintenance outside the target periods above if circumstances require, and Coupa shall provide prior notice to Customer via the Support Portal before doing so.

3. Uptime SLA is calculated as follows:

\[ \frac{(x - y - z)}{(x - z)} \times 100 \]

- \( x \) = total number of minutes in a calendar month
- \( y \) = downtime that is not excluded
- \( z \) = Excused Downtime (as defined above)

4. Customer must request all service credits in writing to Coupa within thirty (30) days of the end of the month in which the Uptime SLA was not met, including identifying the period Customer’s production instance of the Hosted Applications was not available. Coupa shall apply the service credit during Customer’s next billing cycle unless the service credit is reasonably disputed by Coupa, in which case Customer and Coupa shall work together in good faith to resolve such dispute in a timely manner. The total amount of service credits for any month may not exceed the applicable monthly subscription fee for the affected Hosted Applications, and has no cash value (unless a service credit is owed at the termination or expiration of this Agreement without a renewal order, in which case, such service credit shall be paid to Customer within ninety (90) days of the end of the Subscription Term). Uptime and other system performance metrics can be found on trust.coupa.com.

. EXHIBIT A-3: DATA SECURITY MEASURES

The following terms may be updated from time to time, however, for each Order Form, terms effective as of execution of the Order Form shall apply for the duration of the applicable Subscription Term.

(A) ORGANIZATIONAL ACCESS CONTROL

(i) Control Environment. Coupa employees are required to sign a written acknowledgement form documenting their receipt and understanding of the employee handbook and their responsibility for adhering to the policies and procedures therein. Employees are also required to sign a confidentiality agreement agreeing not to disclose proprietary or confidential information, including client information, to unauthorized parties.

(ii) Access Administration. Coupa employees do not have direct access to Customer Data, except where necessary for Technical Support, system management, maintenance, backups and other purposes separately authorized by Customer in writing. Access to Customer Data is further restricted to technical and customer support staff on a need-to-know basis. When an employee or contractor no longer has a business need for these privileges, his or her access is revoked in a timely manner, even if he or she continues to be an employee or contractor of Coupa. Coupa’s policies require Coupa personnel to report any known security incidents to Coupa management, including the Coupa Security Officer, for investigation and action.

(iii) Personnel Screening. Criminal background checks are performed for employees with access to Customer Data as a component of the hiring process.

(iv) Security Awareness and Training. Coupa maintains a security awareness program that includes appropriate training of Coupa personnel on Coupa’s security program. Training is conducted at the time of hire and periodically in accordance with the Coupa Information Security Policy.

(v) Subprocessors and Data Transfer. Coupa may engage Subprocessors and other Third-Party Suppliers (each as defined below) to perform some of its obligations under the Agreement. Coupa shall ensure that Subprocessors only access and use Customer Data in accordance with the terms of the Agreement and that they are bound by written obligations to protect Customer Data. At the written request of Customer, Coupa shall provide additional information regarding Third Party Suppliers and their locations. Customer may send such requests to Data Privacy Officer at legalnotices@coupa.com. "Third-Party Suppliers" means third-party contractors and suppliers engaged by Coupa in the context of the provision of the Hosted Applications or Coupa Platform. "Subprocessors" means those Coupa Affiliates and Third-Party Suppliers that have access to, and process, Customer Data. As part of providing the Hosted Applications or Coupa Platform, Coupa may transfer, store and process Customer Data in the Europe Economic Area, United States of America, and India or any other country in which Coupa and its Subprocessors maintain facilities.

(vi) Business Continuity Management Process. Coupa shall maintain a business continuity plan (BCP) that defines the processes and procedures for the company to follow in the event of a disaster and shall review and regularly test Coupa’s disaster recovery plan to ensure that it is capable of recovering Coupa assets and continuing key Coupa business processes in a timely manner.

(B) PHYSICAL ACCESS CONTROL

(i) Physical Protection of the Data Centers. Physical access to data centers is strictly controlled by the cloud infrastructure provider (“IaaS Provider”) both at the perimeter and at building ingress points by security staff. Authorized staff must pass a two-factor authentication to access data center floors which are monitored by cameras. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff. The IaaS Provider only provides data center access and information to employees and contractors who have a legitimate business need for such privileges. When an employee or contractor no longer has a business need for these privileges, his or her access is immediately revoked, even if he or she continues to be an employee or contractor of the IaaS Provider. All physical access to data centers is logged and audited routinely.

(ii) Availability. Data centers are built in various global regions. All data centers are online and serving customers; no data center is “cold.” In case of failure, automated processes move Customer Data traffic away from the affected area.

(iii) Disaster Recovery. Coupa shall create a disaster recovery plan designed to provide appropriate technical and operational controls to deliver a recovery time objective (RTO) of no more than 1 hour and a recovery point objective (RPO) of availability with data loss of no more than 1 hour for the Hosted Applications.

(iv) Fire Detection and Suppression. Automatic fire detection and suppression equipment has been installed to reduce risk and damage to data center environments.
(v) **Power.** The data center electrical power systems are designed to be fully redundant and maintainable without impact to operations, 24 hours a day, and seven days a week. Data center facilities have power backup and environmental protection systems in the event of an electrical failure for critical and essential loads in the facility.

(vi) **Climate and Temperature.** Data centers are conditioned to maintain atmospheric conditions at optimal levels. Personnel and systems monitor and control temperature and humidity at appropriate levels.

(vii) **Monitoring.** The IaaS Provider monitors electrical, mechanical, and life support systems and equipment so that any issues are immediately identified. Preventative maintenance is performed to maintain the continued operability of equipment.

(C) **TECHNICAL SECURITY MEASURES**

(i) **Database Protection.** Database infrastructure is completely segregated from the application servers and the Internet via firewalls.

(ii) **Encryption.** All communications are encrypted between the data exporter and the data centers using high-grade encryption (AES-256). Access to Coupa’s on-demand applications and services is only available through secure sessions (https) and only available with an authenticated login and password. Passwords are never transmitted or stored in their original form.

(iii) **Intrusion Protection.** The application infrastructure is protected against intrusion by industry standard firewalls at the network, host, and application levels, and intrusion detection systems across all servers. Customer is prohibited from performing its own penetration on any system of Coupa or its supplier.

(iv) **Instance Isolation.** Different IaaS instances are hosted on the same physical machine and are isolated from each other through the hypervisor layer. All packets pass through this layer, so that another instance has no more access to Customer’s instance than any other host on the Internet – the instances look like they are on separate physical hosts. Customer instances in the IaaS infrastructure have no access to raw disk devices, but instead are presented with virtualized disks.

(v) **Malicious Software Protection.** Coupa and the IaaS Provider shall ensure that the Hosted Applications and the Coupa Platform include reasonably up-to-date versions of system security agent software which shall include reasonably current and tested malware protection, patches and anti-virus protection.

(D) **RETURN OF CUSTOMER DATA**

Customer will have a period of 30 days after the effective date of termination of the Agreement ("Transition Period") to download any available data produced by the Hosted Applications ("Transactional Data") based on Customer Data. Customer may seek assistance from Coupa during the Transition Period to download large files of the Transactional Data. Upon such request, Coupa will promptly make Transactional Data available for download in comma separated value (.csv) format along with attachments in their native format. For clarity, such Transactional Data will not include system generated log files or Coupa specific configuration data. After such Transition Period, Coupa shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

(E) **EXCLUSIONS**

If Customer installs, uses, or enables third party services that interoperate with the Hosted Applications then the Hosted Applications may allow such third party services to access, use, or otherwise process and transmit Customer Data. Coupa’s Security Program does not apply to any processing, storage, or transmission of any such Customer Data, and Coupa is not responsible for the security practices (or any acts or omissions) of such third party service providers with respect to data transmitted to and from such third party services. The Security Program excludes: (i) data or information shared with Coupa that is not stored in the applicable Coupa Platform; (ii) data in Customer’s virtual private network (VPN) or a third party network other than one that is under a subcontract with Coupa to assist Coupa in fulfilling its obligations in the Agreement; or (iii) any data used, processed, stored or transmitted by Customer or Users in violation of this Agreement.

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EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached CyberSponse Federal, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA

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**Policy**

- **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

- **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

- **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

- **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

- **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All equal access to justice act. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

- **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

- **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

- **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

- **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

- **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
This On Premise Service Agreement (the “Agreement”) sets forth the terms and conditions governing CyberSponse’s provision to Customer of a On Premise incident response solution.

ON PREMISE SERVICE AGREEMENT

1. DEFINITIONS.
   a. “Affiliate” means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party (where “control” means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).
   c. “Deliverable” is any work developed or created by CyberSponse during the course of providing support or Professional Services to Customer. A Deliverable does not include any Customer Data or Customer Confidential Information.
   d. “Documentation” means the description of the software contained in the then current software datasheet, a copy of which will be provided by CyberSponse to Customer upon request.
   e. “On Premise Service” means CyberSponse software provided, under a limited license, for Customer use on Customer systems.
   f. “Mobile SDK” means CyberSponse's mobile/tablet Software Development Kits.
   g. “Professional Services” means the activation, implementation, training, and other consulting and professional services provided by CyberSponse to Customer as specified in a Statement of Work.
   h. “Schedule” means an ordering document for the On Premise Service that is signed by CyberSponse and Customer. Each Schedule will reference and be subject to this Agreement. The initial Schedule entered into under this Agreement is attached as Schedule A-1.
   i. “Statement of Work” or “SOW” means the document that describes the Professional Services provided by CyberSponse to Customer. Each Statement of Work will reference and be subject to this Agreement.
   j. “Subscription Fees” mean the fees paid by Customer for the right to access and use the On Premise Service and receive Support during the applicable Term.
   k. “Transaction” has the meaning specified in the applicable Schedule.
   l. “Users” means Customer’s employees, agents, contractors, and consultants who are authorized by Customer to use the On Premise Service.

2. PREREQUISITES OF THE ON PREMISE SERVICE
   a. Availability and Use of the On Premise Service. CyberSponse will make the On Premise Service available to Customer in accordance with each Schedule entered into by the parties and the then current Documentation. Customer’s use of the On Premise Service is limited to its internal business purposes solely for the scope and use limitations specified in the applicable Schedule.
   b. Software Provided for Use with the On Premise Service.
      i. The Application. Subject to the terms and conditions set forth in this Agreement, CyberSponse grants Customer the nonexclusive, non-transferable, worldwide, internal use only license during the Term to use the application and its component parts.
   c. Support for the On Premise Service. CyberSponse will provide Customer with the support described in CyberSponse’s then current technical support policy, a copy of which is attached to this Agreement as Exhibit A.

3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF ON PREMISE SERVICE
   a. Access to the On Premise Service. Customer is responsible for (i) all activities conducted under its User logins; and (ii) obtaining and maintaining any hardware, software and network infrastructure (“Customer Equipment”) and any ancillary services needed to connect to, access or otherwise use the On Premise Service, and ensuring that the Customer Equipment and ancillary services comply with the configuration requirements specified in the Documentation.
   b. Use of the On Premise Service. Customer agrees to use the On Premise Service solely for its internal business purposes. Customer will not: (i) resell, sublicense, lease, time-share or otherwise make the On Premise Service to any third party; (ii) send or store infringing or unlawful material; (iii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the On Premise Service or the data contained therein; (iv) modify, copy or create derivative works based on the On Premise Service; (v) reverse engineer the On Premise Service; (vi) access the On Premise Service for the purpose of building a competitive product or service or copying its features or user interface; (vii) use the On Premise Service, or permit its use, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without CyberSponse's prior written consent; or (viii) permit access to the On Premise Service, by a direct competitor of CyberSponse.

4. RESERVED.

5. INTELLECTUAL PROPERTY OWNERSHIP RIGHTS.
   a. By CyberSponse. CyberSponse retains all ownership rights in the On Premise Service (including Cybersponse software and other software utilized to provide the Service), including all intellectual rights in any of the foregoing. CyberSponse grants Customer the nonexclusive, paid-up right to use Deliverables solely for its internal business purposes in connection with its use of the On Premise Service.
   b. By Customer. Customer retains all ownership rights in the Customer Data, including all intellectual rights in the Customer Data. Customer grants CyberSponse the nonexclusive, paid-up right to use the Customer Data to provide the On Premise Service to Customer, including to monitor and improve the Services.
   c. No Other Rights. Except as expressly set forth in this Agreement, neither party grants any rights to the other including any license, right or interest in any Cybersponse or Customer trademark, copyright, trade name or service mark.

6. RESERVED.

7. WARRANTIES.
   a. Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it will comply with all other applicable laws in its performance hereunder. b. By CyberSponse.
      i. “AS IS” SERVICE. A. DISCLAIMER. The CyberSponse warrants that the SOFTWARE will, for a reasonable period from the date of your receipt, perform substantially in accordance with CyberSponse; SOFTWARE PRODUCT written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SOFTWARE AND SERVICES PROVIDED ARE PROVIDED ON AN “AS IS” BASIS. CYBERSPONSE
AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE ON PREMISE SERVICE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CYBERSPONSE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, CYBERSPONSE MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH THE INTERNET OR THE SERVERS UPON WHICH THE ON PREMISE SERVICE IS PROVIDED. CUSTOMERS ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT CUSTOMER SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.

B. **NO LEGAL ADVICE.** NOTHING CONTAINED WITHIN THE ON PREMISE SERVICE IS TO BE CONSTRUED AS LEGAL ADVICE. CUSTOMER EXPRESSLY AGREES TO CONSULT WITH ITS OWN INDEPENDENT COUNSEL AND TO NOT RELY ON ANYTHING CONTAINED WITHIN ANY OF CYBERSPONSE’S SYSTEMS, SOFTWARE, SERVICES, OR ANY OTHER COMMUNICATIONS FOR LEGAL MATTERS. ANY REFERENCE WITHIN THE SERVICES OR SOFTWARE TO LAWS OR REGULATIONS ARE FOR GENERAL REFERENCE ONLY. CUSTOMER UNDERSTANDS THAT IT HAS THE OPPORTUNITY AT ANY TIME DURING THE USE OF THE SERVICES TO REVIEW ALL POTENTIAL COURSES OF ACTION WITH ITS OWN COUNSEL AND AGREES TO TAKE FULL RESPONSIBILITY FOR ITS OWN COMPLIANCE WITH ALL APPLICABLE LEGAL, REGULATORY, AND CONTRACTUAL REQUIREMENTS.

ii. **Warranty for Professional Services**, CyberSponse warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three months after completion the Professional Services will conform to the applicable Statement of Work. In the event of any breach of the foregoing warranty, CyberSponse will re-perform the Professional Services or, if CyberSponse is unable to do so, return the fees paid to CyberSponse for the nonconforming Services.

8. **RESERVED.**
9. **RESERVED.**
10. **RESERVED.**
11. **RESERVED.**
12. **RESERVED.**

**EXHIBIT A TO**

**ON PREMISE SERVICE AGREEMENT**

. **CyberSponse Support Policies**

CyberSponse provides support for the On Premise Service as described in this Exhibit. **Communication**

Issues or problems (for convenience, each is referred to as an “issue”) with the On Premise Service are reported via the web-based customer support tool. In the event the web-based customer support tool is unavailable, the path outlined in the Escalation Section may be used to seek assistance from CyberSponse.

**Severity Level Definitions / Response Time Targets / Resolution** Resolution of reported issues with the On Premise Service will depend upon a complete understanding of the variables unique to each situation. CyberSponse will provide routine updates on resolution efforts.

<table>
<thead>
<tr>
<th>Level / Impact</th>
<th>Definition</th>
<th>Initial Response Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1 –</td>
<td>On Premise Service is down, business component is inoperable or critical interface has failed. Customer unable to use, or benefit from the On Premise Service resulting in a critical financial impact on Customer operation. The customer has gone through their internal troubleshooting process to eliminate any and all issues with customer-supplied infrastructure (hardware, network, etc). The condition requires immediate resolution.</td>
<td>Within two hours</td>
</tr>
<tr>
<td>Critical</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severity 2 –</td>
<td>An issue other than a Severity 1 issue in which the condition makes use or continued use of any one or more functions of the On Premise Service difficult and which Customer, or CyberSponse on Customer’s behalf, cannot reasonably circumvent or avoid on a temporary basis without expenditure of significant time or effort.</td>
<td>Within four business hours</td>
</tr>
<tr>
<td>Significant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severity 3 –</td>
<td>An issue other than a Severity 1 or Severity 2 issue which is not critical in that no loss of data occurs and which Customer, or CyberSponse on Customer’s behalf, cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.</td>
<td>Within one business day</td>
</tr>
<tr>
<td>Moderate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severity 4 –</td>
<td>A non-critical function or component of the On Premise Service is malfunctioning causing minimal impact on Customer’s business.</td>
<td>Within two business days</td>
</tr>
</tbody>
</table>
After CyberSponse completes its initial investigation of the issue, CyberSponse will label it with one of the following categories and responses:

- **Known Defect**
  - Fix or workaround is provided to circumvent or correct the issue.
  - If no workaround is available and it is determined that one is required, CyberSponse will work with Customer to find the best feasible workaround.
  - CyberSponse will advise Customer when the issue is resolved and ticket closed.

- **New Defect**
  - If CyberSponse determines the defect has not been reported before, resolution efforts will be logged into the web-based customer support tool.
    - If the defect is deemed to be high impact, a code fix will be created, tested and released in the On Premise Service. CyberSponse will advise Customer on how soon the fix will be implemented.
    - If the defect is determined to be of lesser impact not requiring immediate implementation of a fix, then CyberSponse may defer the fix. In that event, Customer will be apprised accordingly.
    - Once a plan is created for a future fix, CyberSponse will work as appropriate to resolve the issue.
  - If it is determined that the issue is not related to the On Premise Service, the problem resolution will be Customer’s responsibility. NOTE: Professional Services are available (per an executed Statement of Work) to assist Customer in resolving the issue.
  - Ticket will be closed.

**Escalation**

- Escalation may be initiated from either CyberSponse or Customer (via the following escalation path):
  - Online Support
  - E-mail Support
  - Phone escalation

- CyberSponse Escalation Criteria:
  - Severity 1 issue – If not resolved within 4 hours and no material progress has been made, the issue is escalated within CyberSponse for additional action and resources as needed. Executive management monitors the issue closely until it is resolved.
  - Severity 2 issues – escalated after one business day.
  - Severity 3 issues – escalated after three business days.
  - Severity 4 issues – escalated after five business days.

**Requests for Enhancements**

Customers are required to use the web-based support tool to submit recommendations or suggestions for enhancements to the On Premise Service. Using the tool for submitting enhancements assists CyberSponse in evaluating and prioritizing the suggestion.

**Releases to the On Premise Service**

CyberSponse provides and manages all software releases to maintain the On Premise Service at the latest version. **CyberSponse does not support versions older than 6 months.** Some resolutions may require an upgrade to the most recent release.

**Disaster Recovery**

Customer is solely responsible for all Disaster Recovery and Business Continuity plans and operations. CyberSponse cannot make any guarantees for Customer systems.

**Data Storage**

Customer is solely responsible for configuring appropriate backups and redundant systems. CyberSponse cannot make any guarantees for Customer data storage.
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j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 43.102(a), generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing waiver of jury trial are superseded and not applicable to any GSA Customer order.

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m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CYVIZ, LLC

CYVIZ LICENSE, WARRANTY AND SUPPORT TERMS

I. Return to Factory (RTF) Warranty

All Cyviz solutions come with a two-year return to factory (RTF) hardware and software warranty included in the price of the solution. While under RTF warranty, all defective components will be replaced via advanced parts replacement. If the Ordering Activity operates in a 24/7 environment, 24/7 kits will need to be purchased separately. There are separate 24/7 kits, which cover the color wheels and the fans.

II. Start of the RTF Warranty Period
The hardware and software RTF warranty period starts when the Cyviz Solution Architect (SA) obtains a system sign-off from the Ordering Activity. This normally happens at the completion of the installation of the Cyviz solution. The start of the SLA period will also coincide with the start of the RTF warranty period.

III. Extension of the RTF Warranty Period
After the included two-year RTF Warranty for hardware and software, the Ordering Activity may purchase additional warranties in one-year increments up to a total of three (3) additional years. Therefore, the maximum time for the RTF Warranty period for hardware and software is five (5) years. However, certain conditions must be met. The ability to extend the RTF warranty after the initial purchase is an exclusive benefit from the Contractor, through Cyviz.

IV. Conditions to Extend the RTF Warranty Period
During the initial two-year RTF warranty period, it is strongly encouraged for the Ordering Activity to have an SLA in place for preventative maintenance. Starting with the 3rd year, the customer can extend the warranty through hardware and software of the Cyviz solution for up to three (3) additional years, for a maximum of 5 years of RTF warranty. For each of the three additional years, it is strongly encouraged to also have an active SLA.

V. Factory Location for the Warranty
The return to factory (RTF) location is Cyviz Houston, 5555 San Felipe, Suite 1700, Houston, TX 77056 (unless otherwise noted). The Ordering Activity is responsible for shipping defective equipment to the RTF location, and then Contractor, through Cyviz will pay the shipping back to the Ordering Activity. Cyviz will ship ground, but if an Ordering Activity wishes to expedite shipping, then they will have to incur the additional shipping charges. All RTF shipments must have an RMA number!

VI. Ordering Activity Support During RTF Warranty
An Ordering Activity should e-mail support@cyviz.com as a first step to document any issue(s). A telephone call can also be made to support at (CTC Houston) 713-350-6700 after the initial e-mail.

VII. Covered Items Under the RTF Warranty
During the initial two-year RTF warranty period, if Contractor, through Cyviz, determines a product to be defective in material or workmanship, Cyviz will replace the defective part with a similar or like new part. If the issue is determined to be a manufacturing defect, then Cyviz will replace the product with a similar or like new product.

When a hardware and software warranty is in place, the Ordering Activity will receive advance parts replacement in the form of an equipment swap for such products as the Cyviz scalar, XR301 video processor, XPO cards, Xéd Blending Cards, Cyviz Touch Panel, Cyviz CDC computer, and CDC software BEFORE the defective equipment is shipped back to Cyviz. This will ensure minimal downtime of a Cyviz solution.

The Cyviz projectors and flat panel monitors are not covered under advance parts replacement. They would need to be sent back to the RTF site FIRST where they would need to be repaired or possibly replaced. It is highly recommended to those Ordering Activities who have a mission critical Cyviz solution to purchase one or more Cyviz spares kits. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

VIII. Equipment Swap During RTF Warranty
It is the Ordering Activity’s responsibility to swap out the defective components with the replacement components during the hardware and software warranty period. If an SLA is in place, and the Ordering Activity can wait, then Contractor, through a Cyviz Solution Architect (SA) or an authorised Cyviz reseller engineer, will visit at the normal SLA interval to swap out the equipment.

If the Ordering Activity does not have the ability to swap out possible defective equipment and cannot wait for the next SLA visit, then the Ordering Activity may purchase a Cyviz Emergency Site Visit (CESV). The Ordering Activity can also receive training on how to perform the equipment swap.

IX. Cyviz Emergency Site Visit (CESV)
For Ordering Activities who purchase a CESV, the response time is 72 business hours. For example, if the Emergency Call happens on a Monday afternoon, one of the Cyviz SA’s would be on-site at the Ordering Activity facility by Friday morning of the same week. If the CESV is not used within a one-year period, it will expire. The CESV cannot be converted to a regular SLA or any portion of an SLA.

X. Innovative Cyviz Technical Certification Training
Ordering Activities who wish to learn how to swap out or replace components may attend the Innovative Cyviz Technical Certification (ICTC) Training Level 1 at a separate cost. In order for a Ordering Activity to become certified at the ICTC Training Level 1, the Ordering Activity must attend a one and one-half day training class at one of the Cyviz Technology Centers (CTC). It is the Ordering Activity’s responsibility to pay for travel and expenses for the training. A more advanced, ICTC Training Level 2 is held in Stavanger, Norway each year.

XI. Service Level Arrangement (SLA)
The Cyviz (SLA) includes full preventative maintenance of the complete Cyviz solution, and will cover 'regular use' issues that might arise. A SLA is designed as one (1), two (2) or four (4) visits per year. An SLA4 coincides with a 24/7 environment. Contractor, through Cyviz, will initiate contact with the Ordering Activity and find a mutually agreeable time to schedule the next SLA visit. However, the Ordering Activity must take ultimate responsibility for scheduling the SLA visit.

If an Ordering Activity has more than eight (8) total channels of a Cyviz solution at each distinct location (i.e. a location separated by a reasonable distance), then a Cyviz SLA – Extra Channel charge may apply beyond 8 channels. The parties will discuss and determine if there will be an extra channel charge.

The SLA is not a replacement for the RTF (return to factory) warranty on Cyviz projectors, flat panels or on other Cyviz components.
XII. Work Performed During an SLA Visit
Contractor, through a Cyviz solution architect, a Cyviz certified partner, or a Ordering Activity who has been certified at the Intermediate Cyviz Technical Certification (ICTC) Level 2, may perform the tasks associated with the SLA.

On the SLA visit, the following will happen, (1) Check lamp performance and replace lamps if necessary\(^1\), (2) replace any malfunctioning component\(^2\), (3) Fine adjustment of projector alignment, projector or flat panel monitor calibration of colors and brightness, (4) Upgrade of projector or flat panel monitor firmware if needed, (5) Source set up of additional Cyviz components if needed\(^3\), (6) Upgrade of Cyviz Display Control Software\(^4\), (7) Adjustment of the Cyviz flexible screen, and (8) Possible re-configuration of the complete system to its original state if the system has been changed/bridled.

Note\(^1\) – Extra lamps or projector bulbs must be purchased separately and will need to be delivered to the Ordering Activity PRIOR to the SLA visit.

Note\(^2\) – It is the Ordering Activity’s responsibility to inform Cyviz of any malfunctioning equipment. If the Ordering Activity would like an equipment swap to be performed at the next Cyviz SLA visit, then Cyviz will either send the equipment prior to the SLA visit or have the Cyviz SA bring the equipment to the next SLA visit.

Note\(^3\) – If the Ordering Activity would like to add additional secondary sources such as monitors, TV tuners, DVD or Blu-ray player, etc., (i.e. non-Cyviz components), then this service will need to be communicated to the Contractor. Additional Cyviz Installation charges may apply.

Note\(^4\) – During the time of an SLA visit, the Ordering Activity’s CDC software may be upgraded to the latest version. Unless the Ordering Activity has purchased a Cyviz Multi-touch monitor, it is possible certain versions of the CDC software will not compatible with a non-Cyviz personal computer system for controlling the Cyviz solution.

XIII. Failure to Purchase an SLA
If the Ordering Activity decides not to purchase an SLA at the time of the equipment purchase, then two things will happen: (a) the maximum RTF warranty period for hardware and software maintenance will be two (2) years, and (b) it will be the Ordering Activity’s responsibility to perform preventative maintenance.

XIV. Equipment Outside of the RTF Warranty Period
An Ordering Activity’s RTF may expire at the end of two-years, three-years, four-years or at the end of five-years. At the time of the expired Cyviz RTF warranty, it is the Ordering Activity’s responsibility to send defective equipment back to Contractor, through Cyviz, at the Ordering Activity’s cost for possible repair or replacement. Cyviz will determine if said equipment is repairable, and if so, how much to invoice the Ordering Activity before equipment is sent back. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

XV. Cyviz Spares Kits
For Ordering Activities who have multiple projectors or multiple flat panels, it is recommended to purchase one or more Cyviz Spares Kits. A Cyviz Spares Kit for Viz3D includes; 1 EVO-2 projector, an extra set of glass filters, 10 pair of stereo glasses, and 2 replacement bulbs. The Cyviz Spares Kit for Bizwall, Vizwall or Clusterwall includes; 1 F32 series projector, 4 replacement bulbs, an XPO.3 or XPO.4 card (if applicable), a Cyviz Scalar, and an edge blending card (if applicable). A Cyviz Spares Kit for Flat Panel Monitor includes 1 46” or 55” LCD/LED with redundant power supply, an XPO.3 or XPO.4 card (if applicable), 5 dynamic CDC clients, and a Cyviz Scalar.

XVI. Other Warranty and SLA Items
(a) The RTF warranty and SLA is non-transferrable, (b) The Ordering Activity should have all serial numbers of projectors, flat panel monitors, electronic components and software handy for smoother support. (c) the Contractor reserves the right to refuse RTF warranty coverage to a Ordering Activity who is not current on his or her warranty payments. (d) the Contractor does not make any claims express or otherwise listed outside of this RTF Warranty and SLA document.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
CYXTERA FEDERAL GROUP, INC.

CYXTERA FEDERAL GROUP, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Cyxtera End User License Agreement for the AppGate SDP Software (Government)

These terms are the standard EULA used by Cyxtera Federal Group, Inc. for the AppGate SDP Software which EC America has adopted for the purposes of this Agreement. All references to “Contractor” in this EULA refer to EC America, Inc.

This End User License Agreement (Government) (this “EULA”) governs Contractor's provision and use of the AppGate SDP Software, Hardware, Hosted Services, Professional Services, and Support, as the same may be described in an Order Form.

USE OF ANY APPGATE SDP SOFTWARE PRODUCTS (“PRODUCTS”), OR ANY OF THEIR COMPONENTS, IS EXPRESSLY SUBJECT TO AND GOVERNED BY THIS EULA. IF YOU DO NOT AGREE WITH ANY OF THE TERMS OF THIS EULA, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE PRODUCTS. Contractor and the Ordering Activity placing an order under a GSA Schedule contract that includes this EULA (any such order being the “Order Form”) mutually agree to be bound to these terms. For avoidance of doubt, nothing herein shall establish privity of contract between Cyxtera Federal Group, Inc. and the Ordering Activity.

1. Definitions. Capitalized terms used and not otherwise defined in this EULA have the following meanings: 1.1. “Agreement” means this EULA, together with any applicable Order Form.

1.2. “Authorized User” means the Licensee employees or agents who may be authorized to use the Products. 1.3. “Cyxtera” means the Contractor acting by and through its supplier, Cyxtera Federal Group, Inc.

1.4. “Deliverables” means the tangible results or output that Cyxtera delivers to Licensee in connection with the provision of Professional Services pursuant to an SOW. Deliverables do not include Technical Elements that may be embedded in or delivered with Deliverables.

1.5. “Documentation” means the then-current user manuals, training materials and technical manuals relating to the Products provided or made available to Licensee pursuant to this Agreement.

1.6. “Effective Date” is the earliest of: (a) the date specified as the “Effective Date” in the Order Form, (b) the License Start Date, or (c) Delivery of the applicable Products.

1.7. “Hardware” means the hardware specified on an Order Form and purchased by Licensee with the Software.

1.8. “Hosted Services” means the system whereby Software is made available for access on servers owned or controlled by Cyxtera and accessed by Licensee via the Internet as a service.

1.9. “License Start Date” is the date specified in the Order Form for when the Term. If no specific License Start date is specified, then the License Start Date will be the Effective Date.

1.10. “Licensee” is the entity identified on an Order Form as a purchaser of Products. 1.11. “Order Form” means all written order forms or other ordering documentation entered into by Contractor and Licensee, referencing this EULA and specifying the license type, pricing, license term, delivery and other specific terms and conditions applicable to the Products purchased thereunder. Order Form may include, as applicable, an SOW or a “quote” that is signed by the Licensee. Such Order Form would be entered into as an Ordering Activity.

1.12 “Ordering activity” means an entity authorized to order under GSA Schedule contracts as defined in GSA Order OGP 4800.21, as may be revised from time to time.

1.12. “Products” means, as applicable, Software, Hardware, Hosted Services, Professional Services, and Support.

1.13. “Professional Services” means services provided by Cyxtera pursuant to this Agreement other than Support and services incidental to the Hosted Services. Professional Services may be specified in an Order Form or SOW referencing this EULA.

1.14. “Software” means the AppGate SDP software, as the same may be specified in an applicable Order Form.

1.15. “SOW” means a Statement of Work entered into by the Parties that references this EULA.

1.16 “Support” means the maintenance and support services specified in the Support Terms.

1.17. “Support Terms” means Cyxtera’s current maintenance and support terms which are attached hereto as Exhibit A.

1.18. “Technical Elements” means such tools, templates, know-how, data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices, or specifications (including, without limitation, “Cyxtera Business Models”) that are used by Cyxtera while performing Services. For the avoidance of doubt, Technical Elements includes refinements, changes, enhancements or modifications to Technical Elements made as a result of performing Services for Licensee.

2. License Grant

2.1. Cyxtera hereby grants to Licensee, and Licensee hereby accepts from Cyxtera, the nonexclusive, nontransferable, non-sublicensable right during the Term to install, display, operate and use the Products for Licensee’s internal business purposes.

2.2. The license type(s) for the Products will be designated on the applicable Order Form. If the Order Form does not specify license types, the following rules apply:

(a) All Products are licensed for Licensee’s internal business use only.

(b) Authorized Users are limited to a reasonable number, consistent with this Agreement. Authorized Users may be limited to a set number of registered or named users.

(c) Term licenses are for 1 year only.

2.3. Licensee will ensure that all Authorized Users and any others provided access to the Products abide by the terms of this Agreement. Licensee will be and remain fully responsible for the actions or omissions of such users with respect to the Products. Cyxtera may deploy the Products with license key or other technology that prohibits use of the Products beyond the applicable license term or license parameters.
2.4. Except as expressly provided in this Agreement, Licensee will not: (a) make any copies, modifications or derivative works of the Products, (b) remove, alter, obscure or fail to reproduce in any way any proprietary notices of Cyxtera and its suppliers (including copyright and trademark notices) on any of the Products, (c) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software or Hosted Services or (d) directly or indirectly distribute, disclose, sub-license, market, rent, outsource, use on a service bureau basis, lease or transfer to any third party the Products. Except as expressly provided in this Section 2, Licensee is granted no rights or licenses whatsoever in or to the Products or any other Cyxtera products, intellectual, proprietary or personal rights. All rights and licenses not expressly granted in this Agreement are reserved by Cyxtera.

3. Ownership of Products
3.1. Cyxtera and its licensors are, and at all times will remain, the sole and exclusive owners of all right, title and interest, throughout the world (including all intellectual proprietary rights), in and to all Products, and any modifications, or copies thereof, whether made by or on behalf of Cyxtera or Licensee. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive limited and restricted rights as defined at the FAR clause at 52.227-14 and in line with the limitations of use on the Software as specified in the applicable Order Form to use such derivative works at no further cost. Licensee receives or otherwise obtains no right, title or interest of any kind in the Products under this Agreement, other than the limited license rights expressly set forth in Section 2. Except for Hardware, Licensee obtains only a limited license right to the Products and, notwithstanding of any use of the words “Purchase”, “sale” or like terms in connection with this Agreement, no ownership rights are conveyed to Licensee under this Agreement.

3.2. If Licensee provides any comments, criticisms, or other feedback relating to the Products to Cyxtera (collectively, “Feedback”), such Feedback will be deemed non-confidential and non-proprietary information for purposes of this Agreement. Cyxtera acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Cyxtera will have no obligation to Licensee or any third party with respect to such Feedback, and will be free to use and exploit such Feedback in any form or manner and for any purpose and without payment of any consideration to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

4. Delivery and Installation
4.1. Delivery of Products (“Delivery”) is complete on the earliest date that: (a) the Products are made available to Licensee for use, (b) the Products are used by Licensee, or (c) physical delivery of the Products to Licensee, when applicable.

4.2. Unless otherwise specified in an Order Form, Cyxtera has no responsibility for installation or instruction on use of the Products.

5. Cyxtera Support
5.1. Cyxtera will provide Support for the Products as set forth on an Order Form and in accordance with the Support Terms.

5.2. Cyxtera has no obligation to provide Support except as specified in an Order Form. Unless otherwise specified in an Order Form, all Hosted Services include Support at no additional charge during the applicable Term.

6. Service Level Agreement (SLA)
6.1. For Hosted Services only, and unless otherwise agreed in an Order Form, Cyxtera provides a Service Level Agreement as set out in Exhibit B.

7. Hardware
7.1. Cyxtera is not the manufacturer of the Hardware. Any support provided in connection with the Hardware is provided as a convenience only, and Cyxtera will pass through applicable warranties from the Hardware manufacturers, as such manufacturers may permit. In no event will any such warranty survive more than 1 year from Delivery.

8. Professional Services
8.1. If specified and agreed to in an Order Form or SOW, Cyxtera may provide certain Professional Services to Licensee. In the absence of a specific, separate written agreement governing such Professional Services in the Order Form or SOW, the terms set out in this Section 8 will apply. After execution of an Order Form or SOW for Professional Services, any change in the scope or fees for the same must be agreed upon in writing by the parties.

8.2. The fee for the Professional Services is as set forth in the Order Form or SOW in accordance with the GSA Schedule Pricelist. In addition, if set forth on the Order Form or SOW, Ordering Activity Licensee agrees to pay any travel expenses (“Expenses”) incurred by Cyxtera’s applicable employees, agents and contractors (collectively, “Cyxtera Personnel”) while traveling to and from Licensee facilities to perform Professional Services in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. Unless otherwise agreed in the Order Form or SOW, Fees for Professional Services and reasonable Expenses in accordance with the FTR/JTR will be billed monthly, or after the conclusion of the Professional Services.

8.3. Upon Licensee’s request, Cyxtera Personnel may perform Professional Services at Licensee’s facilities. In all such cases, Cyxtera will seek to minimize disruptions in the continuity and identity of Cyxtera Personnel assigned to work with Licensee. In addition, upon Licensee’s request and for reasonable cause, Cyxtera will remove any Cyxtera Personnel from Licensee’s premises. While performing Professional Services at non-Cyxtera locations as directed by Licensee, Cyxtera Personnel will comply with Licensee’s applicable codes of conduct and procedures (including policies regarding occupational health and safety requirements, building access, and physical and information security) which are provided in writing in advance by Licensee. In addition, Cyxtera will cooperate, as reasonably requested by Licensee, with Licensee’s other contractors or suppliers in providing services related to Professional Services. 8.4. Licensee must use reasonable efforts to: (a) provide Cyxtera Personnel with such information, cooperation and support as may reasonably be required for Cyxtera to provide the Professional Services, (b) permit Cyxtera Personnel to access such of Licensee’s systems, networks, premises and property as is necessary to perform the Professional Services, and ensure that Cyxtera is granted sufficient authorization to use any third party systems, programs, or networks necessary to provide the Professional Services, (c) ensure that all necessary consents, authorizations and licenses have been obtained so that Cyxtera’s provision of the Professional Services does not breach any statutory or regulatory provisions (of whatever jurisdiction) relating to the use of and access to personal data, and (d) ensure the health and safety of Cyxtera Personnel engaged in providing the Professional Services at Licensee’s premises.

8.5. Each Order Form or SOW may specify the Deliverables to be provided by Cyxtera. Deliverables made for Licensee as part of the engagement will become the property of Licensee at the moment such item is fixed in a tangible medium, and all rights, title and interest therein will vest in Licensee and will be deemed to be a “work made for hire” (as defined in the Copyright Act of 1976). As between Cyxtera and Licensee, Cyxtera retains all rights to the Technical Elements, provided, however, Cyxtera hereby grants to Licensee a perpetual, worldwide, nontransferable, non-exclusive, royalty-free, fully paid-up license to use, copy, modify and prepare derivative works of the Technical Elements provided to Licensee in connection with Professional Services for the limited purpose of Licensee being able to use the Deliverables for its internal purposes in connection with the related Products.

9. Fees and Payment
9.1. Following execution of an Order Form or SOW, Cyxtera may issue an invoice to Licensee that incorporates by reference the accepted Order Form and reflects the Fees to be paid by Licensee. Licensee must pay to Cyxtera the license fees (“License Fees,” which may be for Software or Hosted Services), hardware fees (“Hardware Fees”), fees for Professional Services (“PS Fees”), and Support fees (the “Support Fees”, and, together with the License Fees, Hardware Fees, and PS Fees, the “Fees”) set forth on the applicable Order Form in accordance with the GSA Schedule PriceList to the address designated on the invoice. Licensee must pay all Fees in accordance with the terms of the Order Form and in each instance within 30 days following receipt of the invoice. Licensee may not set off any amounts owing to Licensee against any payments owing to Cyxtera. 9.2. Excluding taxes based on Cyxtera’s net income, Licensee is liable and responsible for paying all applicable taxes, and all duties and customs fees relating to Licensee’s receipt or use of the Products, whether or not Cyxtera invoices Licensee for such taxes, duties or customs fees, unless Licensee timely provides Cyxtera with a valid tax exemption or direct pay certificate showing Licensee is exempt from such payments. If Cyxtera is required to pay any such taxes, duties or customs fees, Licensee will reimburse Cyxtera for such amounts in accordance with Section 9.1, and Licensee will indemnify, defend and hold harmless Cyxtera for any such taxes, duties and customs fees and any related costs, interest and penalties paid or payable by Cyxtera with respect thereto. Ordering Activity shall provide Cyxtera with a US tax exemption Form: SF 1094.

10. Term and Termination
10.1. Unless otherwise set forth on an Order Form, the term of this Agreement commences on the Effective Date and continues for 1 year after the License Start Date, (the “Term”). Any renewals or extensions must be agreed in writing by the parties.
10.2. Licensee may terminate this Agreement in accordance with the Federal Acquisition Regulation (FAR).
10.3. Upon termination of this Agreement for any reason: (a) all payment obligations to Cyxtera will become immediately due and owing and Ordering Activity agrees to pay valid payment obligations within thirty (30) days of invoice receipt date; (b) Licensee must immediately cease using the Software and Hosted Services and return all Documentation to Cyxtera, and (c) Licensee must also return to Cyxtera or destroy all copies of Cyxtera’s Confidential Information in every form. Licensee must certify in writing to Cyxtera that it has performed the foregoing obligations. Sections 3, 7, 8, 10.3, 11, 12, 13, 14, 15, and 16 will survive any termination hereunder.
10.4. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Act 41 USC 71 and the Disputes Clause in the applicable prime contract. During any dispute under the Disputes Clause, Contractor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement.

11. Representations and Warranties
11.1. Each party represents and warrants to the other party that: (a) it has all necessary right, power and authority to enter into this Agreement and to perform its obligations hereunder, (b) the execution and delivery of this Agreement, and the performance of its obligations hereunder, do not conflict with and will not result in a breach of any other agreement to which it is a party or by which its assets are bound, and (c) this Agreement, constitutes the legally valid and binding obligation of such party enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable law.
11.2. Contractor further represents and warrants to Licensee that the Software will function substantially in accordance with the Documentation for 60 days from delivery to Licensee when used in accordance the Documentation and terms of this Agreement. Contractor’s obligation, and Licensee’s remedy, for a breach of the warranty contained in this Section 11.2 will be for Contractor, in its sole discretion, to: (a) repair or replace the Software so that it substantially conforms to the Documentation, or (b) in the event Contractor is unable to repair or replace the Software after exercising commercially reasonable efforts to do so, provide Licensee with a pro-rata refund of the fees paid to Contractor for the Software that did not substantially conform to the Documentation.
11.3. The warranty in Section 11.2 will not apply: (a) if the Products are not used in accordance with the Documentation and the terms of this Agreement, (b) if any modification is caused in whole or in part by a modification to, or combination of, the Products by any party other than Cyxtera, (c) if any nonconformance is caused in whole or in part by Licensee's failure to use any new or corrected version of the Software made available by Cyxtera, and (d) to the Hardware, if applicable.
11.4. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, PRODUCTS ARE PROVIDED “AS IS” AND CYXTERA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO PRODUCTS OR ANY OTHER PRODUCTS OR SERVICES PROVIDED PURSUANT TO OR IN CONNECTION WITH THIS AGREEMENT. CYXTERA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. CYXTERA DOES NOT WARRANT THAT PRODUCTS ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH PRODUCTS CAN OR WILL BE CORRECTED.

12. Confidentiality
12.1. Each party will retain in confidence all non-public information and know-how disclosed pursuant to this Agreement, whether oral or in writing, that is either designated as proprietary or confidential or, by the nature of the circumstances surrounding disclosure, should in good faith be treated as proprietary or confidential (“Confidential Information”), using at least the same standard of care used by it to protect its own confidential information, but in no event less than a reasonable standard of care. The receiving party will use the Confidential Information and copy it only to the extent required to accomplish the intent of this Agreement, and disclosure will be restricted to those individuals who have a need to know and have been made aware of and consent in writing to be bound by similar restrictions as those contained herein. For purposes of clarity, Cyxtera Confidential Information will include the Products and the Documentation.
12.2. The parties’ obligations of non-disclosure under this Agreement will not apply to Confidential Information which the receiving party can demonstrate: (a) is or becomes a matter of public knowledge through no fault of the receiving party, (b) was rightfully in the receiving party’s possession prior to disclosure by the disclosing party, (c) subsequent to disclosure, is rightfully obtained by the receiving party from a third party in lawful possession of such Confidential Information, or (d) is independently developed by the receiving party without reference to Confidential Information. Furthermore, the receiving party will be allowed to disclose Confidential Information of the disclosing party if that party is required by law or court order to disclose such Confidential Information, provided that, to the extent permitted by applicable law, the party disclosing any Confidential Information pursuant to a legal duty provides advance written notice of such disclosure to the party whose Confidential Information may be disclosed. Cyxtera recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which, subject to applicable exemptions, requires that certain information be released, despite being characterized as “confidential” by the vendor.

13. Indemnification
13.1. Subject to applicable law, Cyxtera will indemnify Licensee against claims, demands, suits or actions (each, a “Claim”) brought against Licensee by any third party alleging that Licensee’s use of the Products in accordance with the terms of this Agreement constitutes a direct infringement or misappropriation of such third party’s patent claims, copyright or trade secret rights, and Cyxtera will pay damages finally awarded against Licensee with respect to such Claims. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

13.2. Cyxtera’s obligations set forth in Section 13.1 will not apply if the alleged infringement or misappropriation results, in whole or in part, from: (a) modifications made to the Products by anyone other than Cyxtera, (b) use of the Products other than in accordance with the Documentation and the terms of this Agreement, (c) Licensee’s failure to use any new or corrected version of the Products made available by Cyxtera, (d) any Third Party Components, (e) any Licensee content or other specific materials that Licensee uses or uploads into the Products, (f) use of the Products in combination with any third party hardware, software, database or materials, or (g) Licensee’s negligence or willful misconduct.

13.3. In the event of a Claim under this Section 13, Cyxtera will have the option at its expense to: (a) procure for Licensee the right to continue to use the Software that is the subject matter of the Claim, (b) replace or modify the Software that is the subject matter of the Claim to make them non-infringing, or (c) if the foregoing remedies are not commercially practical, seek to suspend or terminate access to the infringing Software. In case of such suspension or termination, Cyxtera will provide a pro rata refund of any prepaid Fees with respect to usage of Products so suspended or terminated.

13.4. Licensee must promptly notify Cyxtera of a Claim after Licensee becomes aware thereof, and Cyxtera will have the right to control the defense or settlement of the Claim. Cyxtera will have no obligation to indemnify Licensee for any amounts paid in settlement of any Claim if such settlement is affected without Cyxtera’s prior consent. Licensee’s failure to deliver prompt notice to Cyxtera after Cyxtera becomes aware of such matter will relieve Cyxtera of any liability to Licensee under this Section 13. Licensee will cooperate fully with Cyxtera and its legal representatives in the investigation of any potential Claim.

13.5. This Section 13 states Cyxtera’s sole obligation, and Licensee’s sole and exclusive remedy, with respect to any intellectual property infringement arising from, or related to, Licensee’s use of the Products.

14. Reserved.

15. Audits

Subject to the Licensee’s security requirements, during the Term and for a period of 2 years thereafter, Contractor may audit Licensee’s facilities, records and use of the Products to determine Licensee’s compliance with the terms and conditions of this Agreement. Such audits will occur during regular business hours, upon reasonable notice, consistent with Licensee’s applicable security measures and must be conducted in a manner designed to limit disruption to Licensee’s business. In the event an audit reveals that Licensee has underpaid any fees or charges owing to Contractor, or that Licensee is using the Products in an unauthorized manner, Contractor will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit and Ordering Activity agrees to pay such valid fees within thirty (30) days of the receipt date of invoice.

16. Miscellaneous

16.1. Governing Law. This Agreement will be interpreted and construed in accordance with the Federal laws of the United States, without regard to conflict of law principles, but excluding (a) the Uniform Computer Information Transactions Act, and (b) the United Nations Convention on Contracts for the Sale of Goods. Nothing contained in this Section 16.1 will prevent either party from seeking injunctive relief from any court of competent jurisdiction.

16.2. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

16.3. Complete Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) is the complete and exclusive statement of the agreement between Licensee and Contractor relating to the use of the Products. Any purchase order or other document issued by Licensee in connection with Licensee’s purchase of the Products (a “Purchase Order”) will be placed pursuant to, and subject to, this Agreement. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

16.4. Separate Signed Agreements. Notwithstanding Section 16.3, if Licensee has entered into a separate, written agreement signed by Contractor for use of the Products, the terms and conditions of such other agreement will prevail over any conflicting terms or conditions in this Agreement.

16.5. Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Contractor in its sole discretion in each and every instance. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

16.6. Independent Contractors. Nothing in this Agreement may be construed to create an agency, joint venture, partnership or other form of business association between the parties. Neither party has the right or authority to make any contract, representation or binding promise of any nature on behalf of the other party, and neither party may hold itself out as having such right or authority.

16.7. Commercial Items. The Products and Professional Services are “commercial items” as that term is defined at FAR 2.101. Contractor provides the Products, including any related documentation, technical data, and/or professional services in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Legislative Agency, Federal Judicial Agency or Federal Legislative Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Contractor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. The terms of this Section regarding U.S. Government Rights are in lieu of, and supersede, any other FAR, DFARS, or other provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement. All other use is prohibited.

16.8. Restricted Rights. The Products are classified as “Commercial Computer Products” and “Commercial Computer Documentation” developed at private expense, contain confidential information and trade secrets of Contractor and its licensors, and are subject to “Restricted Rights” as that term is defined in the Federal Acquisition Regulations. Manufacturer is: Cyxtera Federal Group, Inc., 2333 Ponce De Leon Boulevard, Suite 900, Coral Gables, Florida 33134 Attention: Legal Counsel.

16.9. No Waiver. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

16.10. Headings. The headings in this Agreement are for purposes of reference only and are not intended to affect the meaning or interpretation of this Agreement.

16.11. Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

16.12. Counterparts. Other forms of this Agreement may be executed in one or more counterparts, including facsimile, PDF, and other electronic copies, each of which will be deemed to be an original instrument and all of which together with this EULA will constitute a single agreement.
16.13. Notices. All official notices (including any notices regarding breach, termination, renewal, etc.) required or permitted hereunder must be in writing and must be delivered personally or sent by certified, registered mail or next day express mail or courier, postage prepaid. Any such notice will be deemed given: (a) when so delivered personally, (b) the day after, when sent by next day express mail or courier, or (c) 3 days after, when sent by certified or registered mail, to the address set forth on the applicable Order Form.

16.14. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity will be a direct or indirect beneficiary of, or will have any direct or indirect cause of action or claim in connection with, this Agreement.

16.15. Regulatory Matters. The Products are subject to the export control laws of various countries, including without limit the laws of the United States. Licensee may not submit the Products to any government agency for licensing consideration or other regulatory approval without the prior written consent of Contractor, and will not export the Products to countries, persons or entities prohibited by such laws. Licensee will also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Products by Licensee or its Authorized Users.

16.16. Dispute Resolution. In the event of a dispute between the parties, the Federal Government end user referred to as Licensee in this Agreement agrees that Contractor shall have standing and direct privity of contract to bring a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Contractor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement. The parties agree that this Agreement is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this Agreement to reach resolution on any dispute or request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference.

[END OF EULA TEXT – EXHIBIT A FOLLOWS]
EXHIBIT A
SUPPORT TERMS

Cyxtera Support Terms

IMPORTANT NOTICE: THESE SUPPORT TERMS (THESE “TERMS”) APPLY TO THE LICENSED USE OF PRODUCTS (AS DEFINED BELOW) UPON PURCHASE OF SUPPORT (AS DEFINED BELOW). THE EULA (AS DEFINED BELOW) GOVERNS ANY USE OF THE PRODUCTS; ANY CAPITALIZED TERMS NOT DEFINED IN THESE TERMS WILL HAVE THE MEANINGS ASCRIBED TO THEM IN THE EULA.

1. Overview. These Terms describe the policies under which Cyxtera provides maintenance and technical support services (“Support”) for its proprietary software services and products (“Software”) and related hardware (“Hardware,” and together with Software, “Products”) to its customers (each, a “Licensee”).

Support Levels

<table>
<thead>
<tr>
<th>Support Services</th>
<th>Support Availability (during contracted support hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support Term</td>
<td>Based on Support purchased</td>
</tr>
<tr>
<td>Production Down Incident</td>
<td>Response in 4 Business Hours or less</td>
</tr>
<tr>
<td>High Severity Incident</td>
<td>Response in 8 Business Hours or less</td>
</tr>
<tr>
<td>Medium Severity Incident</td>
<td>Response in 2 Business Days or less</td>
</tr>
<tr>
<td>Low Severity Incident</td>
<td>Response in 3 Business Days or less</td>
</tr>
<tr>
<td>Online Support Portal</td>
<td>Yes</td>
</tr>
<tr>
<td>Software Updates</td>
<td>Maintenance Releases, Minor Releases and Major Releases.</td>
</tr>
</tbody>
</table>

NOTE: “Business Hours” and “Business Days” are measured based on the applicable Support Hours set out in the following table.

Cyxtera Support Contacts and Hours

<table>
<thead>
<tr>
<th>Licensee Region</th>
<th>Support Hours</th>
<th>Cyxtera Contacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>M-F: 8:00am - 5:00pm Eastern US (excluding US bank holidays)</td>
<td>Web: <a href="https://cyxtera.service-now.com/csm">https://cyxtera.service-now.com/csm</a></td>
</tr>
<tr>
<td></td>
<td>AppGate SDP Support: 24x7x365 phone support</td>
<td>Email: <a href="mailto:appgatesdp.support@cyxtera.com">appgatesdp.support@cyxtera.com</a></td>
</tr>
<tr>
<td></td>
<td>for Production Down or High Severity Incidents only</td>
<td>United States/Canada: 1-800-884-3082</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note: for Support outside standard Support Hours, Customer must open a case via the support portal and call dedicated support number</td>
</tr>
<tr>
<td>Europe, Middle East, and Africa (EMEA)</td>
<td>M-F: 08:00 - 17:00 CET (excluding Swedish national holidays)</td>
<td>Web: <a href="https://cyxtera.service-now.com/csm">https://cyxtera.service-now.com/csm</a></td>
</tr>
<tr>
<td></td>
<td>AppGate SDP Support: 24x7x365 phone support</td>
<td>Email: <a href="mailto:appgatesdp.support@cyxtera.com">appgatesdp.support@cyxtera.com</a></td>
</tr>
<tr>
<td></td>
<td>for Production Down or High Severity Incidents only</td>
<td>EMEA: 0800-028-8563</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Asia Pacific: 00531-13-0249+1-888-533-6365</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note: for Support outside standard Support Hours, Customer must open a case via the support portal and call dedicated support number</td>
</tr>
</tbody>
</table>

Support is provided for the Software pursuant to the separate license agreement under which Licensee has purchased Support (the “EULA,” including any applicable Order Forms) and is subject to the terms and conditions of that EULA and the terms of these Support Terms. Support is provided for the term specified herein, or for the period otherwise specified in the EULA.

2. Definitions

2.1. “Cyxtera” means Contractor acting by and through its supplier, Cyxtera.

2.2. “Customer Technical Personnel” means a qualified individual, knowledgeable in Licensee’s systems and business and who has been trained in use of the Products by product training (self-study or instructor-led). Each Customer Technical Personnel must have a login for the support portal using his or her valid company domain email address.

2.3. “Documentation” means the user guide, help information or other documentation generally provided by Cyxtera to Licensees.

2.4. “Evaluation Versions” means any Products provided on a no-charge or evaluation basis.

2.5. “Incident” means each individual issue with the Products reported to Cyxtera.

2.6. “Previous Version” means upon a commercially available release of the Products (“New Version”), any previously released version(s) of the Products will be deemed a Previous Version. Licensee may replace the Previous Version (including all installed copies) with the New Version. Licensee may not use the New Version of the Products and the Previous Version of the Products at the same time in a Production Environment.

2.7. “Production Environment” is the Licensee’s production instance of the Products.

2.8. “Update” means error corrections, patches, or modifications to the Products made generally available by Cyxtera at no additional fee (other than shipping charges if applicable) to its customers contracted to receive applicable Support during the Support Term. Updates may include “Maintenance Releases,” “Minor Releases,” or “Major Releases.”

3. Scope of Support

3.1. In General

Support consists of the following: (a) web-based submissions of Incidents submitted by up to the number of designated Customer Technical Personnel specified in these Support Terms, (b) Updates of the Products, (c) access to an online secure site that contains license keys and latest product downloads, and (d) the provision of guidance and troubleshooting to Licensee in connection with questions and issues arising from the following Licensee activities with respect to the Products of the following nature:

(a) Installation and Downloads: Support for installation includes providing guidance and troubleshooting in connection with Licensee’s downloading and installing of the Software.

(b) Basic Configuration Issues: Support for configuration includes troubleshooting Licensee’s configuration settings for existing installations on Supported Platforms (as defined below) to ensure proper operation and connectivity.

(c) Usage Issues: Cyxtera qualified personnel will answer Licensee’s “how to” questions related to standard Products usage.

(d) New Version Issue: Support for issues regarding replacing a Previous Version with a New Version of the Products.

3.2. SLA for Hosted Services

For Hosted Services only, and unless otherwise agreed in an Order Form, Cyxtera provides a Service Level Agreement (SLA) as set out in Exhibit B to the EULA.

3.3. Efforts to Correct the Products

Cyxtera will make commercially reasonable efforts to correct bugs or other errors in the Products. Cyxtera is not required to correct every bug, error, or problem with the Products reported to Cyxtera. Except for AppGate SDP Support issues, reported issues will only be progressed during normal working hours (unless otherwise agreed in an Order Form).

3.4. Support Exclusions

The following are excluded from Cyxtera’s Support obligations: (a) Products that are used on or in conjunction with hardware or software other than as specified in the applicable Documentation, (b) altered or modified Products, unless altered or modified by Cyxtera, (c) defects in the Products due to accident, hardware malfunction, abuse or improper use, (d) defects in the Products which have been corrected in a New Version of the Products made available to Licensee, (e) any version of the Products for which Support have been discontinued by Cyxtera, (f) Evaluation Versions of the Products or other Products provided at no charge, (g) training, customization, integration and any issues arising from non-standard usage of the Products, and (h) any on-site services or remote access services (unless Cyxtera requests remote access to assist Cyxtera in understanding an issue). In all cases, Cyxtera only provides Support in connection with Products purchased from Cyxtera or an authorized reseller.

Cyxtera has no obligation to accept calls or messages from, or otherwise interact with, personnel other than the designated Customer Technical Personnel.

3.5. Product Versions Covered

Cyxtera will provide Support only for the Products as specified in an Order Form. Cyxtera’s Support obligations do not cover third-party hardware, operating systems, networks, or software.

3.6. Platforms Supported

Cyxtera supports use of the Products only on the platforms specified in the Product technical specification supplied by Cyxtera with the Products (the “Supported Platforms”).

4. Submitting Incidents

4.1. Who May Submit Incidents

Licensee must designate authorized Customer Technical Personnel at time of Purchase (at least one), unless otherwise specified, who will be the person registering the license. That individual may submit change requests to the list of authorized Customer Technical Personnel in writing through the channel(s) specified for the plan selected. Unless specified in an Order Form, Licensee may have no more than 5 Customer Technical Personnel at once. Licensee may substitute Customer Technical Personnel in its discretion.

4.2. How to Submit Incidents

To ensure the fastest response to an Incident, Customer Technical Personnel should use the Support Portal located at https://cyxtera.service-now.com/csm. The Support Portal provides access to Cyxtera’s self-help knowledge base, download services as well as viewing and creation of new support cases.

Requests can also be logged by sending email to appgatesdp.support@cyxtera.com. AppGate SDP Support Licensees can also contact Cyxtera via the support hotline after opening an electronic ticket request.

Once an incident has been submitted, the ‘initial response’ is defined as the period in which initial investigations into the problem are made and resolution details or a plan of action are defined. Response time is deemed to commence from when the Cyxtera Helpdesk has been notified of any issue within normal working hours or from the commencement of normal working hours following receipt of an issue.

4.3. Escalation of Incidents

If Licensee requests escalation of an existing Incident, the Customer Technical Personnel should:

- Call the Support Phone number on the Cyxtera website,
- State that this is an escalation of an existing Incident and provide the case number and support agent responsible if possible, and
- Provide Licensee name and contact details.

In the unlikely event that the Support team does not respond, the Customer Technical Personnel should get in touch with the dedicated Customer Account Manager to assist with the escalation. If a Licensee needs to escalate an ongoing incident, the Customer Technical Personnel should email supportmanagers.appgate@cyxtera.com as well as the Account Manager with a clear subject: Escalation.

The escalation response expectations are:

- During Business Hours: Response within 2 hours of the acknowledged escalation request, and
- After Business Hours: For Production Down escalations, an initial response should be expected within 4 elapsed hours of the acknowledged escalation request. For all other severity levels and questions, 1 business day of the acknowledged escalation request.

5. Support Response and Incident Resolution

5.1. Cyxtera Incident Response

For each Incident reported by Licensee in accordance with these procedures, Cyxtera will:

(a) Confirm receipt of the reported Incident within the acknowledgement time specified in these Support Terms.

(b) Set a Severity Level for the Incident in accordance with the terms below.

(c) Use commercially reasonable efforts to respond to the Incident within the time specified in these Support Terms.

(d) Analyze the Incident and, as applicable, verify the existence of the problem(s) resulting in the Incident, which may include requesting that Licensee provide additional information, logs, and re-execution of commands to help identify the root cause and dependencies of the reported issue.

(e) Give Licensee direction and assistance in resolving the Incident.

(f) Keep a record of ongoing communications with Licensee.

(g) Use commercially reasonable efforts to resolve the Incident in accordance with the target response times set forth in these Support Terms.

(h) Upon request of Licensee, discuss Severity Level and ongoing communication time frame.

Cyxtera may modify the Incident settings.

6. Severity Levels
Cyxtera will prioritize Incidents according to the following criteria:
(a) “Production Down” cases are the highest priority and receive first attention. In such cases, the Products are either completely inoperable or inaccessible to all of Licensee’s users.
(b) “High Severity” cases indicate an issue has severely impacted the performance of the Product’s intended use and is causing a material and adverse impact to the majority of Licensee’s users.
(c) “Medium Severity” cases reflect an issue that has an impact on the performance or functionality of the Products as documented but it is impacting the minority of the Licensee’s users.
(d) “Low Severity” cases reflect an issue that has a minimal impact on the performance or functionality of the Products or is a recommendation for future development or product improvement.

7. Resolution and Closure of Incidents

Incidents will be closed in the following manner:
(a) For solvable issues, depending on the nature of the issue, the resolution may take the form of an explanation, recommendation, usage instructions, workaround instructions, or advising Licensee of an available software fix.
(b) In the event that custom or unsupported plug-ins or modules are used, Cyxtera may ask, in the course of attempting to resolve the issue, that the Licensee remove any unsupported plug-ins or modules. If the problem disappears upon removal of an unsupported plug-in or module, then Cyxtera may consider the issue to be resolved. Supported plug-ins or modules are defined as those listed and defined as supported in in the Cyxtera Documentation.
(c) For issues outside of scope of Support, Cyxtera may also close issues by identifying the Incident as outside the scope of the Support or arising from a version, platform, or usage case which is excluded from these Support Terms.
(d) Cyxtera may close a case if the Customer Technical Personnel has not responded to two attempts or more made by Cyxtera to collect additional information required to solve the incident.
(e) Licensee may request Incidents be re-opened. At Cyxtera sole discretion, Incidents will be reopened for further investigation if the Incident is deemed to be solvable.

[END OF EXHIBIT A TEXT – EXHIBIT B FOLLOWS]
EXHIBIT B TO CYXTERA EULA
Service Level Agreement (Hosted Services Only) For Hosted Services only, and unless otherwise agreed in an Order Form, Cyxtera provides a Service Level Agreement as follows:

1. Service Level Agreement
1.1. Subject to the terms of this Exhibit B, the Hosted Services will be available 99% of the Scheduled Uptime Minutes, measured on a monthly basis (the “SLA Commitment”). If Cyxtera fails to meet the SLA Commitment, Licensee will be eligible for a credit (an “SLA Credit”) calculated as set out below.
1.2. Contractor will issue SLA Credits to Licensee, as applicable, as follows: (a) Within 60 days of the end of the applicable month, Licensee must note the SLA failure and request a credit in writing (email suffices), providing appropriate supporting information. (b) Contractor will confirm the SLA failure and issue SLA Credits based on the actual Availability Percentage and the credit table set out below.
1.3. All SLA Credits are based upon a monthly calculation of Availability Percentage applied to applicable Amount Subject to Service Level Credits. (a) SLA Credit Formulation and Table:

Availability Percentage = Scheduled Uptime Minutes - Unscheduled Outage Minutes / Scheduled Uptime Minutes

<table>
<thead>
<tr>
<th>Availability Percentage</th>
<th>SLA Credit Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>98% to &lt;99%</td>
<td>10%</td>
</tr>
<tr>
<td>Below 98%</td>
<td>25%</td>
</tr>
</tbody>
</table>

1.4. SLA Definitions:
(a) “Amount Subject to Service Level Credits” means the monthly amount due (or the calculated pro rata equivalent) for the month subject to the SLA Commitment.
(b) “Availability Percentage” means that percentage of time, measured monthly, calculated in accordance with the formula set out above.
(c) “Normal Business Hours” means M-F 5:00am – 5:00pm Eastern US time (excluding US bank holidays).
(d) “Scheduled Uptime Minutes” means the total minutes during Normal Business Hours in the applicable month.
(e) “Unscheduled Outage Minutes” means minutes during Normal Business Hours during which Cyxtera does not meet the SLA Commitment for reasons other than scheduled maintenance or due to a Force Majeure event.
1.5. General Rules with respect to the SLA Commitment:
(a) Hosted Services will be deemed available unless:
   (i) a User gets an error response to an attempt to access the Hosted Services during two or more consecutive 90-second intervals, or (ii) data stored in the Hosted Services becomes inaccessible.

(b) Cyxtera will use best efforts to complete all scheduled maintenance outside of Normal Business Hours. Scheduled maintenance during Normal Business Hours must be (a) limited to no more than 15 minutes per incident, and no more than 2 incidents per month, and (b) upon no less than 3 days’ advance written notice to Licensee. If scheduled maintenance does not meet these criteria, the applicable time will be counted as Unscheduled Outage Minutes. (c) Emergency maintenance can occur when jointly agreed to by Licensee and Cyxtera. Cyxtera will provide maximum practical notice for such maintenance. Licensee’s agreement to such request may not be unreasonably withheld. (d) Contractor will not be liable to Licensee, or provide any SLA Credits for any failure to meet the SLA Commitment to the extent that such failure is attributable to the following: (a) acts, omissions or errors of Licensee or a third party, (b) breaches of the Agreement by Licensee, (c) failure of Licensee’s or a User’s software, hardware, systems or connections, or (d) Force Majeure.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Dataiku, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached Dataiku, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the
ATTACHMENT A

DATAIKU SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement and its Exhibits ("Agreement") apply to an order that incorporates these terms and conditions entered into by and between GSA Multiple Award Schedule Contractor acting by and through its supplier, Dataiku Inc. ("Dataiku"), and the Ordering Activity purchasing from the GSA Schedule contract ("Customer" or "Ordering Activity"). This Agreement, the GSA Schedule contract, Schedule pricelist, and all applicable Ordering Documents ("ODs") represent the complete agreement governing the use of Software provided by Dataiku to Customer. In general, the ODs set forth specific configuration and usage details for the Software. In the event of a conflict, an OD prevails over this Agreement.

1. Definitions. Capitalized terms not otherwise defined in this Agreement are defined as follows:

   “Affiliate” means an entity Controlling, Controlled by, or under common Control with another entity, where “Control” and its variants means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of an entity through ownership of securities or partnership or other ownership interests, by contract or otherwise.

   “Documentation” means end user or technical documentation provided with the Software.

   “Intellectual Property Rights” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction.

   “Internal Business Purposes” means use of the Software solely for Customer or Customer Affiliates' internal business projects, and deploying such projects in production mode. This definition does not include providing services using the Software to third parties.

   “License Term” means the License Term identified on an OD, including renewals. If no term is specified, the License Term is 1 year.

   “Maintenance Releases” takes its meaning from the Support and Maintenance Exhibit A attached below and incorporated by reference.

   “Software” means the object code of Dataiku’s proprietary computer programs or modules identified in an OD, backup copies, Maintenance Releases, and modifications to any of the aforementioned.

   “User(s)” means any individual authorized by Customer to use the Software.

2. Software Use and License Grant

2.1 Software; Delivery. The Software is an offering provided by Dataiku and is subject to support and maintenance as specified in Exhibit A. Customer will receive electronic license keys enabling activation of the Software after an OD becomes effective.

2.2 License. For the duration of the License Term, Dataiku grants to Customer and Users a non-exclusive, non-transferable, and non-sublicensable license to: (i) install the Software on computers owned or controlled by Customer; and (ii) use the Software to process data owned, licensed, or controlled by Customer or Customer Affiliates for Internal Business Purposes in accordance with the Documentation, this Agreement, and any applicable OD. Customer may maintain a reasonable number of copies of the Software on its systems only for backup purposes.

2.3 Affiliates. Both Dataiku Affiliates and Customer Affiliate may enter into ODs. When a Customer Affiliate enters into an OD, it will be deemed to have made the purchase directly, and be bound by the terms and conditions of this Agreement as a "Customer."

2.4 Restrictions. Customer and Users will not (and will not permit any third party to): (i) copy or use the Software other than allowed by this Agreement or an applicable OD; (ii) use the Software with unauthorized equipment or products; (iii) modify the Software, create derivative works based upon the Software, reverse engineer, decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form; (iv) create programs similar or identical to the Software; (v) use the Software in violation of any applicable laws; (vi) distribute, sell, license or otherwise provide the Software to unauthorized third parties; (vii) install the Software on systems not under control by Customer or Customer Affiliates, or use or permit the Software to be used to perform services for third parties, including as a service bureau, SaaS, time sharing basis or otherwise; (viii) disclose the results of any performance or functional evaluation of the Software including benchmark results or competitive analyses; or (ix) alter or remove proprietary notices or legends contained on or in the Software.

No implied licenses are granted by Dataiku under this Agreement. Customer is responsible for all use of the Software by anyone accessing the Software using User credentials.

3. Reserved.

4. Ownership. The Software is licensed and not sold or for perpetual use. Dataiku and its licensors own and retain all title, Intellectual Property Rights, and interest in and to the Software and all copies or portions thereof. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost. Suggestions or feedback provided by Customer to Dataiku relating to the Software will be Dataiku's property and deemed Confidential Information of Dataiku, and Customer consents to assignment of suggestions and feedback to Dataiku.

5. Warranties; Disclaimer.

5.1 Mutual Warranties. Each party represents and warrants that: (i) it has full power to enter into this Agreement; and (ii) this Agreement does not conflict with any other agreement with any third party.

5.2 Limited Software Warranty. Dataiku warrants that the Software will materially conform to specifications described in the Documentation under normal use and circumstances.

5.3 Malicious Code. Dataiku will use standard industry practices to test the Software for “Malicious Code” and remove any “Malicious Code” discovered prior to delivery of the Software. “Malicious Code” means viruses, worms, time bombs, Trojan horses, and any

GS-35F-0511T
https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
other harmful code, files, scripts, agents, or programs which may cause harm to Customer's files or systems. Malicious Code does not include standard routines in the Software intended to delete data and implicit in the standard functionality of the Software, or any software bugs or errors handled through Support and Maintenance Services specified in Exhibit A, or any license key or other equivalent code which may limit the functionality or scope of use of the Software to the Customer's specific license.

5.4 Restrictions. The warranties specified above do not apply if the Software or any portion: (i) has been altered, except by Dataiku or an authorized representative; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and the Documentation; or (iii) is licensed for beta, evaluation, or testing purposes. These warranties only apply to the original licensee who provides notice within the warranty period and does not apply if any bug, defect, or error is attributable to products or services not supplied by Dataiku.

5.5 Disclaimers; Exclusion of Implied Warranties. Except for the warranties specified above, the Software and Support and Maintenance Services are provided “as is.” Customer and Customer Affiliates assume sole responsibility for any results obtained from using the Software. Dataiku disclaims any and all warranties, conditions or representations (whether express or implied, oral or written), including without limitation any implied warranties of title, non-infringement, information, merchantability or fitness for any particular purpose (whether or not Dataiku knows or has reason to know of such purpose), whether arising by law, custom, usage in trade or by course of dealing. Dataiku and its licensors do not warrant the results of any use of the Software, or that it is bug or error free, or that its use will be uninterrupted. Dataiku does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack. Dataiku will in no way be held liable for any inability of, error, or fault of Customer or any third party appointed by Customer to install the Software. Data uploaded to the Software and any third-party databases, software, hardware, or services connecting from or to the Software (collectively, “Third Party Materials”) are not the responsibility of Dataiku and Dataiku does not make any warranties or promises with respect to the Third-Party Materials.

6. General

6.1 Open Source. The Software may contain or be provided with components subject to third party open source software licenses (“Open Source Software”). A list of current Open Source Software is provided at https://doc.dataiku.com/dss/latest/thirdparty.html. To the extent necessary, the license accompanying the Open Source Software will apply in lieu of the terms of this Agreement specifically with respect to such Open Source Software.

6.2 Reserved.

6.3 Reserved.

6.4 Reserved.

6.5 Reserved.

6.6 Reserved.

6.7 Reserved.

6.8 Reserved.

6.9 Reserved.

6.10 Reserved.

6.11 Reserved.

6.12 Reserved.

6.13 Export. The Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, or other export or import laws and regulations in other jurisdictions. Customer agrees to comply with all applicable laws and regulations.

6.14 Usage Information. The Software contains a usage data tool that collects limited information about use of the Software. Customer agrees that Dataiku may use usage data for development and support purposes relating to the Software. Dataiku does not require, and Customer undertakes not to transmit any personal data to Dataiku.

6.15 Data Privacy. Each party undertakes to process personal data in accordance with all applicable laws and regulations. Dataiku undertakes to process personal data in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such personal data. The obligations of the GDPR shall not apply to the Ordering Activity.

Exhibit A
Support and Maintenance

“Support and Maintenance Services” are provided to all customers paying fees for licensed usage of the Software.

1. Maintenance. Dataiku shall provide access to all generally available Maintenance Releases. “Maintenance Releases” means Maintenance Updates (defined below) and Major Versions (defined below) that are generally released during the License Term free of charge to Dataiku customers receiving Support and Maintenance Services. “Maintenance Update” means error corrections, bug fixes, patches, workarounds, or minor enhancements to the Software designated by a change to the 3rd version digit (e.g. version 3.4.1 to 3.4.2). “Major Version” means a revision to the Software containing new functionalities, major improvements, and generally designated by a change into the 1st or 2nd version digit (e.g. a change from version 3.0 to 4.0 or from 4.1 to 4.2). “Business Day” means a day (other than Saturday or Sunday or U.S. Federal holidays) on which financial institutions are normally open for business in the United States. “Business Hour” means an hour between 9am and 5pm (EST) on any Business Day.
2. **Support.** *(i)** Self Service Support Portal (Preferred method).* Customers submit cases online, update existing tickets, and track case status 24 x 7 x 365 through a web-based support ticket system including self-service access to an extensive knowledge base. Available at https://support.dataiku.com. *(ii)* Email. Available at support@dataiku.com. Service levels and response times do not apply to questions submitted by email.

3. **Error Correction.** Customer may submit suspected errors or malfunctions to Dataiku’s case tracking system, or via email, and cooperate with Dataiku in any investigation. Dataiku will acknowledge with a ticket number (“Ticket”) and make commercially reasonable efforts to assign appropriate assets to resolve the issue according to the response expectation table below. Customer may use the ticket number to track the status of any confirmed failure of the Software to meet Dataiku specifications (“Confirmed Error”). If a Confirmed Error is discovered, the Customer will provide a description to Dataiku’s support team and co-operate with Dataiku to classify the error. Failure by Customer to respond to Dataiku’s requests within 5 business days may result in Dataiku closing the Ticket. Customer may add a new Ticket at any time.

4. **Classifications of Errors; Service Levels.** Dataiku offers the service levels and response times as shown in the table below. Classification of Confirmed Errors will be determined by Dataiku based on factors including input obtained from Customer.

5. **Limitations.** Dataiku shall be responsible for any Confirmed Error. However, Dataiku shall not be responsible for errors that cannot be reproduced by Dataiku on unmodified Software, for software, firmware, or hardware not supplied by Dataiku, or for information or data contained in, stored on or integrated with any Software returned to Dataiku. Support and Maintenance Services do not include support for any failure, defect, or damage of the Software caused by Customer or User(s) through unauthorized use, accident, abuse, or misuse of the Software, or if the Software has not been used or maintained conformance with the Documentation or the Agreement, or if Software is used by Customer or User(s) on an unsupported platform or hardware, beyond the licensed capacity, or altered or modified by Customer or User(s). Service or repair of the Software by anyone other than Dataiku (or an authorized representative) will void Dataiku’s obligations under this Support and Maintenance Exhibit. Dataiku’s support and maintenance obligations for the Software are applicable to: (a) the latest Major Version; and (b) any Major Version publicly released during the past 1 year for Enterprise Server modules and the past 6 months for Team server modules; so long as the latest Maintenance Update for that Major Version has been installed. Support and Maintenance Services do not include on-site support, consulting (including custom work on Customer's network) and system design, coding, project or facility management, or support for incompatible or third-party supplier products. If Dataiku agrees to remedy any errors or problems not covered as Support and Maintenance Services, Dataiku will perform such work after receiving Customer’s instruction to proceed at Dataiku’s then-current standard time and material rates.

6. **Customer Obligations.** Customer will appoint up to 2 individuals knowledgeable in the operation of the Software as primary contacts to initiate support calls with Dataiku (“Designated Support Contacts”). Dataiku shall only be responsible for providing Designated Support Contacts with Support and Maintenance Services. Customer may change Designated Support Contacts at any time with written notification to Dataiku or appoint additional primary contacts by paying additional fees. Customer may not share login credentials or other benefits of Support and Maintenance Services with any other persons unless Customer has purchased additional services. If necessary, Customer will provide Dataiku with administrative access to the Software components (including remote access to end points and console).

7. **Changes.** Dataiku may make changes at any time to this Exhibit with written notice to Customer; provided the changes do not materially degrade the support and maintenance services to which Customer is entitled.

### Classification of errors

<table>
<thead>
<tr>
<th>Error level</th>
<th>P1</th>
<th>P2</th>
<th>P3</th>
<th>P4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Critical error. &quot;System is down&quot; or Software is completely inoperative, or a condition severely and significantly impacting the API nodes, design nodes, or automation nodes. No procedural work around exists. For example, all API nodes crash, or the design or automation node crashes and the Software does not restart after the crashes.</td>
<td>Serious or high-impact business condition affecting substantial number of users. The Software operates in a severely restricted/reduced capacity causing significant impact to portions of the Customer’s business. No procedural work around exists.</td>
<td>Medium to low-impact problem. Involves partial non-critical functionality loss. May be a minor issue with limited or no loss of functionality or impact to the Customer’s operation for which there is a workaround available. For example, a data transformation function does not work as expected, and a workaround in code is required.</td>
<td>Software is functional. Relates only to proposed feature enhancements or proposed modifications. No material impact on quality, performance or functionality of Software. For example, errors in Documentation, or a proposed feature enhancement.</td>
</tr>
</tbody>
</table>

### “Enterprise” and “Team” server module support service levels by error level

<table>
<thead>
<tr>
<th>Error level</th>
<th>P1</th>
<th>P2</th>
<th>P3</th>
<th>P4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Response</td>
<td><strong>Enterprise:</strong> 4 Business Hours</td>
<td><strong>Enterprise:</strong> 8 Business Hours</td>
<td><strong>Enterprise:</strong> 8 Business Hours</td>
<td><strong>Enterprise:</strong> 2 Business Days</td>
</tr>
<tr>
<td>Team: 8 Business Hours</td>
<td>Team: 2 Business Days</td>
<td>Team: 2 Business Days</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| Update Frequency | <strong>Enterprise:</strong> Every 2 hours | <strong>Enterprise:</strong> Every Business Day | <strong>Enterprise:</strong> As needed |
| Team: Every 4 hours | Team: As needed | Team: As needed |</p>
<table>
<thead>
<tr>
<th>Level of Effort</th>
<th>Enterprise: Continuous 24x7 effort; escalation in 24h to VP of Support</th>
<th>Team: Continuous Business Day effort; escalation in 72h to VP of Support</th>
<th>Enterprise: Best efforts</th>
<th>Team: Best efforts</th>
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ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

DELL TECHNOLOGIES, INC.

DELL ENTERPRISE LICENSE AGREEMENT

1. General. This Enterprise License Agreement (“ELA”) sets forth the legal agreement between and its affiliates who are legally bound by these terms (“Customer”) and Dell Technologies, Inc. and Dell’s licensors and suppliers, retains all right, title, and interest in and to the Software in whole or in part. Dell, Dell's licensor(s) and/or supplier(s) retain ownership of the Software itself and all related intellectual property rights. Customer is not granted any rights to any trademarks or service marks of Dell. This ELA does not apply to any third party software that is not included as DELL CONFIDENTIAL part of the Software or addressed in Exhibit A. The use of any other software, including any software package or file, whether licensed to Customer by Dell or by a third party, is subject to the terms and conditions that come with or are associate with such software.

4. Rights Reserved. THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted in this ELA, Dell, on behalf of itself and its licensors and suppliers, retains all right, title, and interest in and to the Software and in all related content, materials, copyrights, trade secrets, patents, trademarks, derivative works and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, republication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.

5. Restrictions. Except as otherwise provided herein or expressly agreed by Dell, Customer may not, and will not allow a third party to: (A) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber in whole or in part the Software; (B) provide, make available to, or permit the use of the Software in whole or in part by, any third party, including contractors, without Dell’s prior written consent, unless such use by the third party is subject to the terms and conditions of this ELA and Customer is liable for any breach of this ELA by such third party; (C) copy, reproduce, republish, upload, post, transmit or distribute the Software in any way; (D) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software program, in whole or in part; (E) modify or create derivative works based upon the Software; (F) use the Software on a service bureau, rental or managed services basis or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device; or (G) use the Software to create a competitive offering. Customer may not, and will not allow a third party to, use the Software program in excess of the number of licenses expressly authorized by Exhibit A. In addition, Customer may not share the results of any benchmarking activities without Dell’s prior written consent.

6. Compliance. Customer will certify in writing, upon reasonable request by Dell, Customer’s compliance with the terms of this ELA, indicating the number of Software licenses deployed at that time. Customer grants Dell or an agent selected by Dell, the right to perform an audit of Customer’s compliance with this ELA during normal business hours. Customer agrees to cooperate and provide Dell with all records reason.

7. Support and Subscription Services Not Included. Dell does not provide any maintenance or support services under this ELA. Maintenance and support services, if any, are provided under a separate agreement. Additionally, this ELA, in and of itself, does not entitle Customer to any Updates at any time in the future.

8. Termination. Dell may terminate this ELA immediately and without prior notice if Customer fails to comply with any term or condition of this ELA or if Customer fails to timely pay for the licenses to the Software. In addition, Dell may terminate any license associated with Software distributed for free at any time in its sole discretion. In the event of termination of this ELA, all licenses granted hereunder shall automatically terminate and Customer must immediately cease use of the Software and return or destroy all copies of the Software. The parties recognize and agree that their obligations under Sections 4, 5, 11, 12, 13, 15, 16, 18 and 19 of this ELA, as well as obligations for payment, survive the cancellation, termination, and/or expiration of this ELA and/or the license granted hereunder.

9. Export, Import and Government Restrictions. Customer is advised that the Software is subject to U.S. export laws as well as the laws of the country where it is delivered or used. Customer agrees to abide by these laws. Under these laws, the Software may not be sold, leased, or transferred to restricted countries (currently Cuba, Iran, North Korea, Sudan and Syria), restricted end-users, or for restricted end-uses. Customer specifically agrees that the Software will not be used for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer understands that certain functionality of the Software, such as encryption or authentication, may be subject to import restrictions in the event Customer transfers the Software from the country of delivery and Customer is responsible for complying with applicable restrictions.

10. Limited Warranty. Dell has the right to grant the licenses to the Software, and such Software will substantially conform in material respects to the functional specifications and current documentation provided by Dell with the Software. This limited warranty is not transferable and extends only for thirty (30) days from the date of delivery of the Software. This limited warranty does not cover damages, defects, malfunctions or failures caused by any unauthorized modification by Customer, or Customer’s agents, of the Software; any abuse, misuse or negligent acts of Customer; modification by Customer of any interfaces or any software or hardware interfacing with the Software; or any failure by Customer to follow Dell’s installation, operation or maintenance instructions.

EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, DELL MAKES, AND CUSTOMER RECEIVES, NO OTHER WARRANTIES RELATED TO THE SOFTWARE WHETHER EXPRESS, IMPLIED OR STATUTORY, AND DELL SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DELL DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET CUSTOMER’S REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNUNINTERRUPTED OR ERROR FREE. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE SOFTWARE AND THE RESULTS ACHIEVED. CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, AND DELL’S ENTIRE LIABILITY FOR BREACH OF THE WARRANTIES PROVIDED HEREIN, IS FOR DELL, AT ITS SOLE DISCRETION, TO EITHER USE COMMERCIALLY REASONABLE EFFORTS TO REMEDY ANY NON-COMPLIANCE OR TO PROVIDE A REFUND OF THE LICENSE FEES PAID BY CUSTOMER TO DELL FOR THE SOFTWARE. THIS DISCLAIMER OF LIABILITY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED -- ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE.

11. Limitation of Liability. DELL WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS ELA AND/OR THE SOFTWARE. DELL SHALL HAVE NO LIABILITY FOR THE FOLLOWING: (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK(S), OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, (E) LOSS OF GOODWILL OR REPUTATION, OR (F) SOFTWARE NOT BEING AVAILABLE FOR USE OR THE PROCUREMENT OF SUBSTITUTE SOFTWARE OR GOODS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS ELA, DELL’S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS ELA AND/OR THE SOFTWARE SHALL NOT EXCEED THE TOTAL AMOUNT RECEIVED BY DELL FOR THE PARTICULAR SOFTWARE GIVING RISE TO SUCH CLAIM(S). THIS PARAGRAPH SHALL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS OR LIABILITY FOR MISAPPROPRIATION OR INFRINGEMENT OF DELL’S INTELLECTUAL PROPERTY. DELL SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

The foregoing limitations, exclusions and disclaimers shall apply regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise, for any claim. Insofar as applicable law prohibits any limitation on liability herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation compliant with applicable law. The parties agree that the limitations on liabilities set forth herein are agreed allocations of risk and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of any such liability.

12. Indemnification. Dell shall defend and indemnify Customer against any third-party claim or action that the Software (specifically excluding third-party and open source software) infringes or misappropriates that third party’s patent, copyright, trade secret, or other intellectual property rights (“Indemnified Claims”). In addition, if Dell receives prompt notice of an Indemnified Claim that, in Dell’s reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its sole discretion, (A) obtain a right for Customer to continue using such Software; (B) modify such Software; (C) replace such Software with a noninfringing substitute; or (D) provide Customer with the right to return the allegedly infringing Software. Notwithstanding the foregoing, Dell shall have no obligation under this Section for Indemnified Claims resulting or arising from: (i) modifications of the Software that were not performed by or on behalf of Dell; (ii) the operation, use, or combination with a third-party product, software or service (the combination of which causes the claimed infringement) of the Software; or (iii) Dell’s compliance with Customer’s specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by Customer (collectively, “Excluded Indemnified Claims”). Dell’s duty to indemnify and defend is contingent upon: (a) Customer providing Dell with prompt written notice of the third-party claim or action, (b) Dell having the right to solely control the defense and settlement of such claim or action, and (c) Customer’s cooperation with Dell in defending and resolving such claim or action. When section states Customer’s exclusive remedies for any third-party intellectual property claim or action, and nothing in this ELA or elsewhere will obligate Dell to provide any greater indemnity to Customer. Customer, at Customer’s expense, shall defend and indemnify Dell against any claim, action or proceeding brought against Dell which arises from or is in any manner connected with Excluded Indemnified Claims.

13. Confidentiality. Customer agrees to: (A) refrain from using Confidential Information except as necessary to exercise the rights herein and (B) use best efforts to preserve and protect the confidentiality of the Confidential Information. "Confidential Information" means any oral, written, graphic or machine-readable information disclosed by Dell that is (i) identified as confidential; (ii) designated in writing to be confidential or proprietary; or (iii) should be reasonably understood to be confidential. Confidential Information includes the Software and its trade secrets, including but not limited to source code, the development status of the Software, the appearance, content and flow of the user interface of the Software, and the content and documentation of the Software. Confidential Information does not include information that is (a) publicly available other than through a breach of this ELA; (b) known to Customer prior to such disclosure; or (c) subsequently lawfully obtained by Customer from a third party that has no obligations of confidentiality. Customer agrees that, without Dell’s prior written consent, Customer will not grant access to any Dell Confidential Information to any persons or entities except for Customer’s employees and agents who have a business need to have such access and who are obligated to maintain the confidentiality thereof as set forth herein. In some, limited circumstances, Dell may need to engage a third party to fulfill its obligations to Customer under this license. By using this software Customer agrees that Dell may provide Customer’s information to such third party for that purpose. Any feedback or information that is collected from Dell customers shall be considered Confidential Information and this feedback shall be treated by Dell on a non-confidential and unrestricted basis, and Dell shall have all rights, title and ownership of such feedback.

14. Open Source and Third Party Software. A portion of the Software may contain or consist of open source or third party software, which Customer may use under the terms and conditions of the specific license under which the open source or third party software is distributed. THIS
OPEN SOURCE AND THIRD PARTY SOFTWARE IS PROVIDED “AS IS” WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS OPEN SOURCE OR THIRD PARTY SOFTWARE, DELL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. Under certain open source software licenses, Customer is also entitled to obtain the corresponding source files. Customer may find corresponding source files for the Software at http://opensource.dell.com or other locations that may be specified to Customer by Dell.

Jurisdiction/Injunction. This ELA is governed by the laws of the State of Texas, U.S.A. without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply. Customer agrees that money damages would be an inadequate remedy for Dell in the event of a breach or threatened breach by Customer of the provisions set forth in this ELA; therefore, in the event of a breach or threatened breach of any such provisions, Dell may, in addition to any other remedies afforded to it by law or equity, immediately obtain and enforce an injunction from any court of law or equity prohibiting Customer from breaching such provisions. All rights and remedies afforded Dell by law shall be cumulative and not exclusive. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING DIRECTLY OR INDIRECTLY OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR BREACH OF THIS ELA, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THEM.

No Waiver. No waiver of breach or failure to exercise any option, right, or privilege under the terms of this ELA on any occasion shall be construed to be a waiver of a subsequent breach or right to exercise any option, right, or privilege.

No Assignment. Customer may not assign or transfer Customer’s interests, rights or obligations under this ELA by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of an authorized executive officer of Dell. Any attempt to assign this ELA by Customer shall be null and void.

Entire Agreement. Unless Customer has entered into another written agreement with respect to the Software which has been signed by Customer and an authorized representative of Dell and which conflicts with the terms of this ELA, Customer agrees that this ELA supersedes all prior written or oral agreements, warranties or representations, including any and all other click-wrap, shrink-wrap or similar licenses or agreements, with respect to the Software. No amendment to or modification of this ELA, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any term of this ELA is found to be invalid or unenforceable, the remaining provisions will remain effective. Customer agrees that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter shall not apply to the terms and conditions of this ELA. Customer represents that it has read this ELA, has had the opportunity to review it with local counsel, understands it, and agrees to be bound by all terms and conditions stated herein.

Notices. Notice to Dell under this ELA must be in writing and sent to the address below or to such other address (including facsimile or e-mail) as specified in writing and will be effective upon receipt.

Dell Inc., Attn: Dell Legal
One Dell Way, Round Rock, Texas 78682

Exhibit A Description of Licensed Software

1. Operating, diagnostics and other software for Dell-branded information technology products, including, but not limited to the following named Dell product lines:
   - AppAssure
   - Compellent
   - EqualLogic
   - Force 10
   - KACE
   - SonicWall
   - Wyse

2. Use of the software is subject to the terms and conditions of the Dell Enterprise License Agreement to which this Exhibit A is attached ("ELA").

3. Purchase of the software is subject to the terms and conditions of Exhibit B of the ELA.

Exhibit B Terms & Conditions Applicable to the Purchase or Use of Licensed Software by the U.S. Government

1. This Section applies whenever the Customer is the U.S. Federal Government, or any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal Government. In such case, the terms and conditions of this Exhibit B pertain to the Customer’s use and disclosure of the Software and Documentation, and shall supersede any conflicting contractual terms or conditions. To the extent that it is held by a court or board of competent jurisdiction that any part of any provision of the ELA is invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said license agreement.

2. The software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Sections 13 and 16 of this ELA shall not apply to the U.S. Federal Government but shall continue to apply to prime contractors and subcontractors of the U.S. federal government. Disputes with the U.S. Federal Government shall be subject to resolution pursuant to the Contract Disputes Act of 1978, as amended. All other provisions of this ELA remain in effect as written.

3. Purchase of Software licenses is subject to the terms and conditions of (a) U.S. General Services Administration Multiple Award Schedule 70 Contract GS-35F-4076D; or (b) other such U.S. Government Federal Acquisition Regulation Part 12 Commercial Item prime and/or subcontract in which the Dell Enterprise License Agreement to which this Exhibit B is attached is incorporated either in its entirety or by reference, and all Delivery Orders and Task Orders issued thereunder which include the Exhibit B software.

4. Use of the software is subject to the terms and conditions of the Dell Enterprise License Agreement to which this Exhibit B is attached.

5. Changes to the Dell Enterprise License Agreement applicable to the purchase of licensed Software by the United States Government.

ELA Section
1. General. The definition of “Company” is Dell Products L.P. on behalf of Dell Marketing L.P and / or Dell Federal Systems L.P.

5. Restrictions. In subsection (B), the phrase “and Customer is liable for any breach of this ELA by such third party” is deleted. The Government has no liability to third-parties under this ELA.

6. Compliance. Any auditor selected by Dell or an agent of Dell is subject to approval of the Government, which shall not be unreasonably withheld. In the event the audit finds a deficiency of greater than five percent (5%) in the licensee fees paid, then such shall be considered a change and resolved under the Changes clause of the applicable contract. And in the event such a change cannot be negotiated in a commercially reasonable time, the same shall be considered under Contract Disputes Act of 1978, as amended (“CDA”).

8. Termination. The termination provision is deleted and replace with the following: “This ELA and the license granted to Customer to use the Software hereunder shall be terminated (i) by Company, if such remedy is granted after conclusion of the Contract Disputes Act dispute resolution process referenced in Section 10 or if such remedy is otherwise available to Company under United States federal law; or (ii) by Customer, at its option in accordance with FAR 52.212-4. Upon any termination, Customer shall promptly return the Software and any copies thereof in any form. Company will not have any obligation to refund any portion of any license fee upon the termination of this ELA if the End User materially breached any provision of this ELA. Sections 4, 5, 11, 12, 13, 15, 16, 18, 19 of this ELA, as well as Exhibit A payment obligations, shall survive termination, cancellation, and/or expiration of this ELA and/or the license granted hereunder.”

11. Limitation of Liability. The language in this Section 11 is deleted and replaced with the following: “IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND ARISING UNDER OR IN ANY WAY RELATED TO THE SOFTWARE OR THIS ELA. EXCEPT AS IT RELATES TO INDEMNIFICATION FOR INFRINGEMENT REFERENCED IN SECTION 13, IN NO EVENT SHALL COMPANY’S AGGREGATE LIABILITY ARISING UNDER OR IN ANY WAY RELATED TO THE SOFTWARE OR THIS ELA EXCEED THE AGGREGATE LICENSE FEES PAID FOR THE LICENSE GRANTED HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ANY CLAIM HEREUNDER, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT OR ANY RELATED WRITING, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to Company’s Multiple Award Schedules Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.”

12. Indemnification. This section does not apply to the Government, but shall apply to prime and subcontractors to the Government. Disputes with the Government shall be subject to resolution pursuant to the CDA.

15. Jurisdiction/Injunction. This section does not apply to the Government, but shall apply to prime and subcontractors to the Government. Disputes with the Government shall be subject to resolution pursuant to the CDA.

17. No Assignment. This paragraph is deleted and number 17 is marked “Reserved.”

18. Entire Agreement. The language in this Section 18 is deleted and replaced with the following: “This ELA (a) constitutes the entire agreement between the parties with respect to the licensing of the Software and supersedes any prior negotiations, proposals, representations and agreements relating specifically thereto; (b) may only be changed by a writing signed by the parties specifically referencing this ELA; (c) shall be interpreted in accordance with the federal laws of the United States of America; and (d) is not assignable, in whole or in part, by either party. Any prohibited assignment is null and void. Failure by either party to enforce any term hereof shall not be deemed a waiver. All claims arising out of or relating to this ELA shall be resolved in accordance with the Contracts Disputes Act of 1978. In the event any provision of this EULA is declared invalid, the remainder shall continue in binding effect.”
DELTA BRAVO MASTER AGREEMENT

This Master Agreement (the “Agreement”) is by and between the undersigned Ordering Activity under GSA Schedule contracts customer identified in an Order that references this Agreement (the “Customer” or “You” or “Ordering Activity”) and Dynamic Data Management, Inc. d/b/a Delta Bravo (“Dynamic Data Management” or “Delta Bravo” or “We” or “Us”). This Agreement governs your use of our service offering and its related documentation (collectively, the “Service”) and any related software and/or other technology that we provide you for use in conjunction with the Service, including any updates, modifications or enhancements thereto (collectively, the “Software”). Certain Software is required to access the Service.

1. LICENSE

1.1. Grant of License. Subject to the terms of this Agreement, including any usage restrictions set forth in the applicable Order and the restrictions in your service tier, Delta Bravo grants you a limited, revocable, non-exclusive and non-transferable right and license during the Term to do the following, in each case solely in accordance with documentation or instructions that may be provided by Delta Bravo for such purposes: (a) install, integrate, perform and use the Software on the number of instances set forth in your Order solely to access and use the Service; and (b) access the features and functions of the Service. To the extent Delta Bravo provides you with any updates or upgrades to the Software or Service, such updates and upgrades shall be deemed to constitute part of the Software or Service and shall be subject to all terms and provisions set forth in this Agreement, including, without limitation, terms and provisions related to licenses, use restrictions and ownership of the Software or Service. By both parties executing this Agreement in writing, any download or use of the Software will be governed by this Agreement. 1.2. Access. We will provide or make available to you the Software and any necessary passwords, protocols, or other relevant procedures, as may be necessary to allow: (a) administrative users authorized by you to create accounts for server instances and users; and (b) your users to access the Service. User accounts may only be created for individuals (e.g., team or departmental accounts are prohibited). Use of the Service will be subject to the service limitations based on the service tier set forth in your Order. You must ensure that all information associated with each user account remains complete and accurate. You shall ensure your users keep these passwords and protocols to themselves and do not share them with anyone else, and you shall let us know if there is any breach of the confidentiality of these passwords and protocols. You are solely responsible for any and all use of your user accounts and all activities that occur under or in connection with your passwords and protocols. Each user must provide his or her full legal name, a valid email address, and any other information requested during the account signup process in order to obtain an account.

1.3. Availability. We will use commercially reasonable efforts to make the Service available during any calendar month (excluding planned maintenance and force majeure events). If such availability drops below 85% in two (2) consecutive calendar months (excluding planned maintenance or force majeure events), you may, as your sole and exclusive remedy for such unavailability, terminate the Service upon 10 days prior written notice with no penalty. If you choose to terminate the Service due to unavailability, you will receive a prorated refund for any unused portion of the Term for which you have prepaid. We consider our Service to be available if you can log into our Service and access Usage Data (as defined in Section 2.1 below).

1.4. Restrictions. Unless otherwise agreed in writing by us, you will not: (a) assign, sublicense, market, sell, lease, rent, distribute, convey or otherwise transfer the Software to any third party; (b) use the Software for any purposes other than accessing and using the Service; (c) adapt, alter, modify, translate or create derivative works of the Software; (d) use the Software or Service in any manner not in compliance with applicable laws; (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software or any software component of the Service are compiled or interpreted, and you acknowledge that nothing in this Agreement will be construed to grant you any right to obtain such code; (f) allow third parties to gain access to the Service or use the Software or data for any purpose other than as a service bureau; (g) access or attempt the access the Software or Service by any means other than what Delta Bravo provides or expressly allows; or (h) interfere with or disrupt the integrity or performance of the Service or the data contained therein. You shall only use the Software and Service for your internal purposes, and you agree that you will not use the Software or Service in the provision of services to any third party without the express written permission by Delta Bravo.

1.5. Open Source Software. The Software may contain certain components that are subject to “open source” or “free software” licenses (“Open Source Software”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Section 1.1. Nothing herein shall bind the Ordering Activity to any Third Party Open Source Software terms unless the terms are provided for review and agreed to in writing by all parties. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Delta Bravo makes such Open Source Software, and its modifications to that Open Source Software, available by submitting a request to support@deltabravo.ai.

1.6. Retained Rights. Except for the rights granted you in this Agreement, Delta Bravo retains all right, title and interest in and to the Software and Service, and you acknowledge that you neither own nor acquire any additional rights in and to the Software or the Service not expressly granted by this Agreement. You further acknowledge that Delta Bravo retains the right to use the Software and Service for any purpose in Delta Bravo’s sole discretion. Delta Bravo may choose to modify the Service to enhance a previously purchased capability, add capabilities to, or otherwise improve the functions of the Software, including any portions of the Service as we update our offerings and add more features.

2. USE

2.1. Data. To provide the Service, Delta Bravo will collect data about your databases, infrastructure, networks and applications (“Usage Data”) and you hereby authorize such collection. You own such Usage Data, but grant Delta Bravo the right to make use of such Usage Data in order to provide the Service. You also grant us the perpetual right to use, reproduce, adapt, aggregate and otherwise exploit the Usage Data in an anonymized, aggregated format to enhance and improve the licensed Delta Bravo products and services. No Usage Data may be disclosed to or utilized for the benefit of any third party if such disclosure or use would allow a third party to identify Customer from the Usage Data.
2.2. Feedback. We may send you questionnaires or surveys on a periodic basis in written or electronic form. You acknowledge and agree that any comments, ideas and/or reports you provide to Delta Bravo regarding installation, product experience, functionality, performance, accuracy, consistency and ease of use of the Software or Service (“Feedback”) will be considered Delta Bravo proprietary and confidential information, and you hereby irrevocably transfer and assign to Delta Bravo all intellectual property rights embodied in or arising in connection with such Feedback, and any other rights or claims that you may have with respect to any such Feedback. Delta Bravo, in its sole discretion, may freely use, sell, distribute, or otherwise make use of the Feedback, whether written or oral, furnished by you to by Delta Bravo. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

2.3. Excluded Countries. You may not use, export, import or transfer the Software or Service except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Software or Service and any other applicable laws. In particular, but without limitation, the Software or Service may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone of the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Person’s List or Entity List. By using the Software or Service, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Software or Service for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Delta Bravo are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer the Software or Service, or any portion thereof, either directly or indirectly, to any country in violation of such laws and regulations. If you are found using the product from these countries, your account will be subject to immediate termination.

3. LIMITED WARRANTY; LIMITATION OF LIABILITIES

3.1. General Disclaimer. Delta Bravo warrants that the SOFTWARE AND SERVICE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE AND SERVICE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, YOU AGREE THAT THE SOFTWARE AND SERVICE ARE PROVIDED “AS IS” AND “WITH ALL DEFECTS.” DELTA BRAVO DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT. THE SOFTWARE AND SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DELTA BRAVO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

3.2. Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL DELTA BRAVO BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, LOSS OF USE, LOSS OF DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF DELTA BRAVO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DELTA BRAVO BE LIABLE FOR THE LOSS OF DATA OR THE PROCUREMENT OF SUBSTITUTE SERVICES. EXCEPT FOR LIABILITY ARISING FROM SECTION 7 (INDEMNIFICATION), THE CUMULATIVE LIABILITY OF DELTA BRAVO FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE CONTRACT PRICE PAID TO DELTA BRAVO BY YOU UNDER THIS AGREEMENT.

3.3. No Professional Advice. All information, materials, content and/or advice in the Service is for informational purposes only and should not replace or substitute for any professional advice. Delta Bravo expressly disclaims, and you expressly release Delta Bravo from and against any liability concerning any diagnosis, treatment, or action arising from the information or advice provided in or through the Service.

3.4. Essential Basis of Agreement. You acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 3 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

4. TERM; SUSPENSION; TERMINATION

4.1. Term. The term of this Agreement (“Term”) will commence on the date an Order between you and Delta Bravo is executed and continue as long as such Order remains in effect.

4.2. Suspension. We reserve the right to temporarily suspend Service at any time at our discretion and without notice if you use the Service in a manner that would cause legal liability to Delta Bravo or otherwise disrupt the Service.

4.3. Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement may be had as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Delta Bravo shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Service, and comply with any decision of the Contracting Officer. 4.4. Effect of Termination. Upon the expiration or any termination of this Agreement, the license and all rights granted to you under this Agreement will immediately terminate, and you will promptly purge and destroy all copies of the Software in your possession. Termination of your account includes: (a) removal of access to all offerings within the Service; (b) deletion of your password and all related information; and (c) barring of further use of the Service. The provisions of Sections 1.6, 2.1, 2.2, 3, 5, 7 and 9 will survive termination or expiration of this Agreement. Any Usage Data generated through the Service will be permanently lost upon termination of this Agreement. Delta Bravo will not have any liability whatsoever to you for any temporary suspension or termination pursuant to the Contract Disputes Act, including for deletion of your Usage Data. All provisions of these Terms, which by their nature should survive, shall survive termination of Services, including without limitation ownership provisions, warranty disclaimers and limitations of liability.

5. CONFIDENTIALITY. We and you acknowledge that, in the course of performance of this Agreement, either may obtain information from the other party which it knows or has reason to know is of a confidential and/or proprietary nature (“Confidential Information”). Without limiting the above, the Software, documentation, the Feedback, and any product roadmap is our Confidential Information and Usage Data is your Confidential Information. Except as expressly stated in this Agreement, during the Term and at all times thereafter, neither party may disclose any such Confidential Information to any third party, nor may either party use such Confidential Information of the other party for any purpose, other than as permitted herein. Confidential Information will not
include any information which: (i) are or become readily available to the trade or public through no fault of the recipient of the Confidential Information; (ii) is subsequently lawfully and in good faith obtained by a party from an independent third party without breach of this Agreement; (iii) the recipient can establish that the information was in its possession prior to the date of disclosure of such Confidential Information; or (iv) is developed independently by the recipient without reference to any Confidential Information of the other party. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent such disclosure is required by applicable law, a court of competent jurisdiction or a governmental agency, provided that such party promptly notifies the other party to the extent legally permitted of such disclosure and provides the other party an opportunity to object to such disclosure and seek a protective order or other appropriate relief. Delta Bravo recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

6. FEES; TAXES. In consideration for the Service and license to the Software, Customer will pay Delta Bravo the fees (“Fees”) set forth in the Order in accordance with the GSA Schedule Pricelist. All Fees will be billed at the frequency specified in the Order and are due within thirty (30) days of receipt of invoice by Customer. Any unpaid and uncontested balance due and owing will incur late interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Delta Bravo shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7. INDEMNIFICATION.

7.1. Reserved.

7.2. By Delta Bravo. Delta Bravo will defend Customer from any claim brought by a third party that any use of, or access to, the Service or Software by Customer violates, infringes or misappropriates, as applicable, any third-party intellectual property right. Notwithstanding the foregoing, Delta Bravo shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from Customer’s use of the Services or Software other than in accordance with this Agreement. Upon the occurrence of any claim for which indemnification is or may be due under this Section, or in the event that Delta Bravo believes that such a claim is likely, Delta Bravo may, at its option (i) modify the Service or Software so that it becomes non-infringing but functionally similar, or substitute a functionally similar alternative; (ii) obtain a license to the applicable third-party intellectual property at no cost to Customer; or (iii) terminate the applicable Order on written notice to Customer and refund any unused, pre-paid fees. Nothing contained herein shall be construed or quoted in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. 7.3. Procedures. The indemnifying party shall pay all damages finally awarded or paid in settlement of any such Claims. The indemnified party must notify the indemnifying party of any Claim promptly in writing. Any delay or failure by either party to this Agreement to exercise any of its rights hereunder will not affect the enforceability of such provision under other circumstances and in other jurisdictions, or of the remaining provisions under all circumstances. Any delay or failure by either party to this Agreement to exercise any of its rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. Neither party will assign this Agreement, whether voluntarily or by operation of law, nor will either party delegate its duties hereunder without consent from the other party and any attempt to do so will be null and void. This Agreement will be construed and enforced in accordance with the Federal laws of the United States. The Software and any software components of the Service are a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212, all U.S. Government end users acquire the Software and Service with only those rights set forth therein. For contractual purposes, you (i) consent to receive communications from us in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, documents, disclosures, and other communications (“Communications”) that we provide to you electronically satisfy any legal requirement that such Communications would satisfy if it were in writing. Your consent to receive Communications and do business electronically, and our agreement to do so, applies to all of your interactions and transactions with us.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Docker, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et.seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 17101 et seq.) To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract; and Whereas, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et.seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 17101 et seq.) To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1(a) (JAN 1995). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract.
and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**DOCKER, INC.**
Docker’s products and services to U.S. Government agencies, including any “Ordering Activity”, defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2H ADM (the “Customer”). Unless otherwise indicated herein, any capitalized terms which are defined in the Enterprise Agreement shall the same meaning where used in this Supplement.

The Enterprise Agreement and this Supplement cover the use of Supported Software or Subscription Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Docker by an Ordering Activity does not constitute that Ordering Activity’s assent or acceptance of the Enterprise Agreement. Docker agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follow:

1.0 Enterprise Agreement – Preamble

The following is modified from Enterprise Agreement Preamble “BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 (“DOCKER”) AND THE INDIVIDUAL OR LEGAL ENTITY” and is replaced with the following: “BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 (“DOCKER”) AND THE LEGAL ENTITY”.

The following is deleted from Enterprise Agreement Preamble “OR IS USING THE APPLICABLE SOFTWARE MADE AVAILABLE BY DOCKER”.

2.0 Enterprise Agreement Section 1.0 Definition:

The following is modified from Enterprise Agreement Section 1.11 “Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: https://www.docker.com/legal/subscription-services/” and is replaced with Enterprise Agreement Section 1.11 “Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: https://www.docker.com/support/”.

3.0 Enterprise Agreement Section 2.0, License:

The following is deleted from Section 2.3, License Keys: “Customer acknowledges and agrees that any attempt to exceed the use of the Licensed Software beyond the limits configured into the Key will automatically and immediately terminate the licenses granted under this Agreement”.

4.0 Enterprise Agreement Section 6.0 Records and Audit:

The following is modified from Enterprise Agreement Section 6.0 Records and Audit “Upon prior notice, Docker or its representative may inspect such records to confirm Customer’s compliance with the terms of this Agreement” and is replaced with Enterprise Agreement Section 6.0 Records and Audit “Upon prior notice and in accordance with Customer’s security requirements, Docker or its representative may inspect such records to confirm Customer’s compliance with the terms of this Agreement”.

The following is deleted from Enterprise Agreement Section 6.0 Records and Audit “Prompt adjustments shall be made by Customer as directed by Docker to compensate for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee, with the applicable late payment interest. Additionally, if Customer has underpaid Docker or its authorized reseller by more than 5% of the total amount owed hereunder, the cost of the audit shall be borne by Customer,” and is replaced with Enterprise Agreement Section 6.0 Records and Audit “During the term of this Agreement and for one (1) year thereafter: (a) If Customer’s security requirements are met, Docker or its designated agent may inspect Customer’s facilities and records to verify Customer’s compliance with this Agreement. Any such inspection will take place only during Customer’s normal business hours and upon no less than ten (10) days prior written notice from Docker. Docker will give Customer written notice of any non-compliance, including without limitation the number of underreported units of Supported Software or Subscription Services (“Notice”); or (b) If Customer security requirements are not met and upon Docker's request, Customer will run a self assessment with tools provided by and at the direction of Docker (“Self Assessment”) to verify Customer’s compliance with this Agreement. Within thirty (30) days from Docker’s request, Customer will finalize the Self Assessment and provide Docker with the results in the form of a written report certified by Customer’s authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Customer will make payment to Docker or its authorized channel partner for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109).”

5.0 Enterprise Agreement Section 7.0 Term:

The following is deleted from Enterprise Agreement Section 7.0 Term “Either party may terminate this Agreement and any Order Form incorporating the terms of this Agreement (if Docker is a party to such Order Form) if the other party materially breaches this Agreement and fails to cure such breach within 30 days of receiving written notice thereof.” and is replaced with Enterprise Agreement Section 7.0 Term “Recourse against the Customer for any alleged breach of this Agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. Docker shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer”.

6.0 Enterprise Agreement Section 9.0 Confidentiality:

The following is deleted from Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Injunctive Relief is deleted in its entirety.

The following section heading is deleted from Enterprise Agreement Section 9.0 Confidentiality sub-section 9.6 Return of Confidential Information is replaced with Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Return of Confidential Information.

7.0 Enterprise Agreement Section 10. Warranties:
The following section heading is modified from Enterprise Agreement Section 10.0 No Warranties is replaced with Enterprise Agreement Section 10. Limited Warranties.

The following is deleted from Enterprise Agreement Section 10.0 Limited Warranties “CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT ALL USE OF THE SUPPORTED SOFTWARE IS AT CUSTOMER’S SOLE RISK AND THAT THE SUPPORTED SOFTWARE AND SUPPORT SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE.”” is replaced with Enterprise Agreement Section 10. Limited Warranties “DOCKER WARRANTS THAT (a) THE SUPPORTED SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF CUSTOMER’S RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH DOCKER’S WRITTEN MATERIALS ACCOMPANYING IT, AND (b) ANY SUPPORT SERVICES PROVIDED BY DOCKER SHALL BE SUBSTANTIALLY AS DESCRIBED IN APPLICABLE WRITTEN MATERIALS PROVIDED TO CUSTOMER BY DOCKER. EXCLUDING THE FOREGOING…”

8.0 Enterprise Agreement Section 11. Indemnification:

The following is deleted from Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker “(b) tenders to Docker sole control of the defense and settlement of the claim, and” is replaced with Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker “(b) tenders to Docker control of the defense and settlement of the claim to the extent permitted by 28 USC 516, and”.

9.0 Enterprise Agreement Section 12. Limitation of Liability:

The following section is deleted from Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap. “THE GREATER OF USD $100 OR”.

10.0 Enterprise Agreement Section 13. Export Restrictions:

The following section is deleted from Enterprise Agreement Section 13. Export Restrictions. “Customer will defend, indemnify, and hold harmless Docker and its suppliers and licensors from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors or employees.”.

11.0 Enterprise Agreement Section 14. Miscellaneous:

The following section is deleted from Enterprise Agreement Section 14. Miscellaneous “Agreement will be governed by the laws of the State of California without reference to conflict of law principles.” is replaced with Enterprise Agreement Section 14. Miscellaneous “Agreement will be governed by the Federal laws of the United States without reference to conflict of law principles.”.

The following section is deleted from Enterprise Agreement Section 14. Miscellaneous “Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from this Agreement. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Docker may assign the entirety of its rights and obligations under this Agreement, without consent of the Customer, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.”.

The following section is deleted from Enterprise Agreement Section 14. Miscellaneous “Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof.” is replaced with Enterprise Agreement Section 14. Miscellaneous “Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof, namely the licensing of the Supported Software.”.

The following section is modified from Enterprise Agreement Section 14. Miscellaneous after “…signed by both parties and clearly understood by both parties to be an amendment or waiver.” is replaced with Enterprise Agreement Section 14. Miscellaneous “…signed by both parties and clearly understood by both parties to be an amendment or waiver. The terms of this Agreement shall not supersede the terms of the underlying GSA Schedule Contract”.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

DUO SECURITY, INC.

AGREEMENT
(Government Customers – GSA Multiple Award Schedule Contract) This agreement ("Agreement") is entered into effective as of __________, 20__ (the "Effective Date") between Cisco Systems, Inc., on behalf of itself and for the benefit of its affiliates, including, without limitation, Duo Security, Inc., a Delaware corporation with a registered address at 123 N. Ashley Street, Ann Arbor, MI 48104 ("Duo Security"), and the Federal Customer purchasing from the GSA Multiple Award Schedule (MSA) contract ("Customer"). This Agreement, including the Terms and Conditions containing, among other things, warranty disclaimers, liability limitations and use limitations, includes and is effective for the Order Form and any subsequent renewals, purchase orders or Order Forms (submitted in written or electronic form) related to Customer's subscribing to the Services unless different or additional terms are expressly agreed to in writing and signed by both parties. There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party’s acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in this Agreement to the exclusion of all other terms. Capitalized terms shall have the meanings ascribed to them in the Terms and Conditions.

TERMS AND CONDITIONS

1. DEFINITIONS
1.1 "Customer" means the U.S. Government customer that has placed an order with for the Services and thereby signed up for the Services and agreed to the terms of this Agreement under the GSA MAS contract. The Department of Veterans Affairs shall not be a Customer and cannot purchase from Duo Security under the GSA MAS contract.
1.2 "Customer Data" means any information or data about Customer or Users (and its and their staff, customers or suppliers, as applicable), that is supplied to Duo Security by or on behalf of Customer or any User in connection with the Services, or which Duo Security is required to access, generate, process, store or transmit pursuant to this Agreement, including (but without limitation) information about Customer’s and Users' respective devices, computers and use of the Services.
1.3 "Customer Personal Data" means any Customer Data that is personal data (as defined under the DPA).
1.4 "Data Protection Laws" means the DPA, EC Directive 95/46/EEC, EC Directive 2002/58/EC, the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable data protection laws, regulations and legally binding codes of practice from time to time in force applicable to the performance of a party's obligations under this Agreement.
1.5 "Documentation" means guides, instructions, policies and reference materials provided to Customer by Duo Security in connection with the Services, including the documentation located at https://www.duosecurity.com/docs, which may be amended from time to time.
1.6 "DPA" means the UK Data Protection Act of 1998.
1.7 "Duo Mobile Software" means all Duo Security proprietary mobile applications (available on iPhone, Android, Palm, BlackBerry, Windows Mobile and other supported mobile devices) used in providing the Services, and any updates, fixes and/or patches developed from time to time.
1.8 "Fees" means the applicable fees as set forth on the Order Form.
1.9 "Hardware Tokens" mean hardware security tokens purchased by Customer under an Order Form.

1.10 GSA Approved 3-Dec-19
1.11 "Integration Software" means (a) Duo Security proprietary software and (b) open source software used in providing the Services which integrates with Customer's network or application, including SSL or other VPN, Unix operating system, Microsoft application, and/or web application, as provided in the Documentation and any updates, fixes and/or patches developed from time to time.
1.12 "Intellectual Property Rights" means all patents, registered designs, unregistered designs, design rights, utility models, semiconductor topography rights, database rights, copyright and other similar statutory rights, trade mark, service mark and any know how relating to algorithms, drawings, tests, reports and procedures, models, manuals, formulae, methods, processes and the like (including applications for any of the preceding rights) or any other intellectual or industrial property rights of whatever nature in each case in any part of the world and whether or not registered or registered, for the full period and all extensions and renewals where applicable.
1.13 "Order Form(s)" means the order forms through which the Government customer purchases the Duo Security Services from Duo Security under the GSA MAS contract for the initial order for the Service, and any subsequent order forms issued to Duo Security, specifying, among other things, the maximum number of Users, the initial Term, the purchase of any Hardware Tokens, the Fees, telephony credits (if any), and such other charges and terms as agreed between the parties.
1.14 "Performance Data" means data with respect to usage and other aggregate measures of the Services' performance that Duo Security may collect from time to time.
1.15 "Service Level Agreement" or "SLA" means the description of support provided to Customers and its Users and of the availability of the Services attached to this document as Appendix A.
1.16 "Software" means the Integration Software and Duo Mobile Software.
1.17 "Telephony Credits" mean credits for Customer's Users to provide authentication by telephone or SMS.
1.18 "Term" means the subscription term indicated on the Order Form and any subsequent renewal terms.
1.19 "User" means any user of the Services who Customer may authorize to enroll to use the Services under the terms of this Agreement.
2. SERVICES FOR CUSTOMER; DUO SECURITY OBLIGATIONS

2.1 Subject to and conditioned on the GSA MAS Contractor’s receipt of payment of the Fees and in any event, subject to full compliance with all other terms and conditions of this Agreement, Duo Security grants Customer and Users a non-exclusive, non-sublicensable, non-transferable license to access and use the Services, along with such Documentation as Duo Security may make available during the Term.

2.2 The Services and SLA are subject to modification from time to time at Duo Security’s sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Duo Security. If the modifications continue to perform according to the description of the Services specified in Section 2.3 in all material aspects. Customer shall have the right to terminate the Agreement pursuant to Section 10.2 without any penalty if (i) a material modification to the Services or the SLA is made which materially diminishes the functionality of the Services or materially diminishes the SLA, (ii) Duo Security has not obtained Customer’s consent for such modifications and (iii) Duo Security does not provide a remedy in the cure period stated in Section 10.2.

2.3 Duo Security will make the Services available and the Services will perform substantially in accordance with the description of the services found at http://www.duosecurity.com/editions. Notwithstanding the foregoing, Duo Security reserves the right to suspend Customer’s (or any of its Users’) access to the Services; (i) for scheduled or emergency maintenance, or (ii) as it deems reasonably necessary to respond to any actual or potential security concerns.

2.4 Subject to full compliance with the terms and conditions of this Agreement, Duo Security will use commercially reasonable efforts to provide support to Customer as described in the Service Level Agreement. In the event that Customer earns 15 days of service credits, determined in accordance with the terms of the Service Level Agreement, in each of three consecutive months, Customer may notify Duo Security of its intention to terminate the Services and may terminate its Agreement with Duo Security for the provision of the Services to Customer and, as the sole and exclusive remedy, Customer will receive a refund of any pre-paid subscription Fees paid for Services not rendered as of the termination date.

2.5 Duo Security collects certain information about Customer and its Users as well as their respective devices, computers and use of the Services. Duo Security uses, discloses and protects this information as described in this Agreement and Duo Security’s Privacy Policy (the “Privacy Policy”) dated March 24, 2016, attached to this document as Appendix B.

3. CUSTOMER RESPONSIBILITIES

3.1 Customer may only use the Services in accordance with the Documentation and as explicitly set forth in this Agreement. Customer will cooperate with Duo Security in connection with the performance of this Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support. Customer is solely responsible for determining whether the Services are sufficient for its purposes, including but not limited to, whether the Services satisfy Customer’s legal and/or regulatory requirements.

3.2 Use of the Services may require Users to install Duo Mobile Software on their mobile devices. In addition, third party terms may apply with respect to third party products and software accessible via the Services and with respect to devices using third party operating systems or software or in the event that Duo Mobile Software is downloaded from third party sites (collectively, “Third Party Services”). Customer’s access and use of Third Party Services is governed solely by the terms and conditions of such Third Party Services. Duo Security does not endorse, nor is responsible or liable for, makes no representations or warranties and provides no indemnification with respect to any aspect of the Third Party Services, notwithstanding anything in this Agreement to the contrary. Duo Security is not liable for any damage or loss caused or alleged to be caused by or in connection with enablement, access or use of any such Third Party Services, or Customer’s reliance on the privacy practices, data security processes or other policies of such Third Party Services. Duo Security does not provide customer support or assistance with respect to the Third Party Services. Users may be required to register for or log into such Third Party Services on their respective websites or apps.

3.3 Customer acknowledges that the Services will require the Users to share with Duo Security certain information for the purposes of providing the Services, such as user names, password and other login information. This information may include personal information (such as email address, and/or phone number) regarding the Users, and Duo Security will use such information for the purposes of providing the Services to Customer and Users. Prior to authorizing an individual to become a User, Customer is fully responsible for obtaining the consent of that individual, in accordance with all applicable laws, to the use of his/her information by Duo Security for purposes of providing the Services, which use shall be governed by the terms of the Privacy Policy. Customer represents and warrants that all such consents have been or will be obtained prior to authorizing any individual to become a User.

3.4 Customer will be fully responsible for Users’ compliance with this Agreement. Any breach of this Agreement or such other terms by a User shall be deemed to be a breach by Customer. Customer is solely responsible for determining whether the Services are sufficient for Customer’s purposes.

3.5 There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties after the date hereof unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party’s acceptance of this Agreement was and is expressly conditional upon the other’s acceptance of the terms contained in the Agreement to the exclusion of all other terms.

4. RESTRICTIONS

Customer will not, and will not permit any of its Users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, Software, Hardware Tokens or any data related to the Services (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws and intellectual property laws).

5. PAYMENT OF FEES

5.1 Customer will pay the GSA MAS Contractor and the GSA MAS Contractor will pay Duo Security the Fees plus all applicable sales, use and other purchase related taxes (or provide Duo Security with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes) in accordance with the Prompt Payment Act and the Order Form. Except as otherwise indicated in the applicable Order Form, all fees and expenses shall be in U.S. dollars. Duo Security will not charge users any fees for their use of the Services or Duo Mobile Software without Customer’s authorization. Customers’ carriers or service providers may charge fees for data usage, messaging, phone calls or other services that are required for them to use the Services.

5.2 Customer’s Order Form will indicate an initial allotment of Telephony Credits, if applicable. Customer may purchase additional Telephony Credits separately via the billing section of Customer’s administrative interface or by contacting a sales representative. U.S. and international rates for telephony can be found at https://www.duosecurity.com/docs/telephony_rates.
At any time during the Term, and unless otherwise agreed to in writing by the parties, any increase or overage in the maximum number of Users specified in the Order Form will be treated in accordance with this Section 5.3 (a “Subscription Upgrade”). The maximum number of Users shall be increased as follows:

For Subscription Upgrades (i) for Customers where the maximum number of Users on the Order Form is fewer than 500 Users, the maximum number of Users will be increased automatically in increments equal to 50 Users, (ii) for Customers where the maximum number of Users on the Order Form is 500 to 1000 Users, the maximum number of Users will be increased automatically in increments equal to 100 Users, and (iii) for Customers where the maximum number of Users on the Order Form is 1001 or greater, the maximum number of Users will be increased automatically in increments equal to 250 Users. Duo Security shall invoice Customer for the increase in the maximum number of Users at the subscription rate and payment terms specified in the most recent Order Form, which will be prorated for the remainder of the then applicable subscription term. For any future subscription Term, the number of Users and applicable Fees will reflect any Subscription Upgrades.

6. CONFIDENTIALITY

6.1 Each party (the “Receiving Party”) hereby acknowledges that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Receiving Party’s technology, Users or business (hereinafter referring to “Confidential Information” of the Disclosing Party).

The Receiving Party agrees: (i) not to disclose the Confidential Information to any third person other than those of its employees, investors and potential acquirers with a need to have access thereto and who have entered into non-disclosure and non-use agreements; (ii) to disclose the Confidential Information only in such manner as may be reasonably required in connection with the Services and/or this Agreement; and (iii) to return or destroy all Confidential Information in its possession at the expiration or earlier termination of this Agreement.

6.2 The Receiving Party shall not use the Confidential Information for any purpose other than to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Duo Security may reasonably presume that any unrelated information received from Customer is not Confidential Information and will not be subject to any confidentiality restrictions or obligations.

7. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Except as expressly set forth herein, Duo Security shall retain all Intellectual Property Rights relating to the Services or Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to Duo Security. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. As between the parties, Duo Security will own all Performance Data, all other forms of aggregated information, and all de-identified data relating to any User and/or the Services. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any Intellectual Property Rights.

US Government Rights. The Services and Software are “commercial items” as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Duo Security provides the Services and Software, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 2.101 (Technical Data) and FAR 2.121 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 227.7202-3 (Rights in technical data and computer software) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Legislative, Executive, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Duo Security to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Services and return the Software, unused, to Duo Security. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

8. DATA PROTECTION

8.1 In this Section 8, the terms “personal data”, “data processor”, “data subject”, “process and processing” and “data controller” shall be as defined in the DPA.

8.2 For the purposes of the Data Protection Laws, as between Customer and Duo Security, the parties agree that Customer shall at all times be the data controller and Duo Security shall be the data processor with respect to the processing of Customer Personal Data in connection with this Agreement.

8.3 By entering into this Agreement, Customer agrees that Duo Security may collect, retain and use certain Customer Personal Data (which may include, without limitation, names, mobile telephone numbers, IP addresses and email addresses of Users) in connection with the Services. As the data controller of such Customer Personal Data, Customer shall be responsible for ensuring that, and warrants and represents to Duo Security that it shall ensure that any processing of Customer Personal Data in connection with the Services shall comply with the Data Protection Laws. This shall include (without limitation) ensuring that Customer: (a) has given adequate notice and made all appropriate disclosures to the data subjects regarding Customer’s and/or Duo Security’s use and disclosure of Customer Personal Data, including (but without limitation) for the provision of the Services; and (b) has and/or obtains all necessary rights, and where applicable, all appropriate and
valid consents from the data subjects to share such personal data with Duo Security and to permit use of Customer Personal Data by Duo Security for the purposes of the provision of the Services and performing its obligations under this Agreement or as may be required by applicable law ("Purpose"), including (but without limitation) notifying the data subject of the transfer of Customer Data outside of the European Economic Area to countries whose laws they have acknowledged may provide a lower standard of data protection than exists in the European Economic Area ("EEA").

8.4 At the request of Customer, Duo Security and Customer shall negotiate a separate data processing agreement, setting forth each Party's obligations in respect of any processing of Customer Personal Data, which agreement will be incorporated herein by reference once executed by the Parties.

8.5 Customer acknowledges that Duo Security is reliant on Customer for direction as to the extent to which Duo Security is entitled to use and process Customer Data. Consequently, Duo Security will not be liable for any claim brought by a data subject to the extent that such action or omission resulted directly from Customer's instructions. Customer undertakes to comply in all respects with any applicable laws, regulations, standards and guidelines applicable to personal data and shall use all reasonable endeavors to where possible anonymize personal data sent to Duo Security.

9. INDEMNIFICATION.

For Customers enrolled in one of the editions of Services requiring purchase, Duo Security shall indemnify and hold Customer harmless from liability to third parties resulting from infringement by the Services of any United States or United Kingdom patent or any copyright or misappropriation of any trade secret, provided Duo Security is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity (subject to the requirements of 28 USC §516, if applicable) to assume sole control over defense and settlement; Duo Security will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to portions or components of the Services (i) not created by Duo Security, (ii) resulting in whole or in part from Customer specifications, (iii) that are modified after delivery by Duo Security, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of Services is not strictly in accordance with this Agreement and all related Documentation. If Duo Security receives information about an actual or alleged infringement or misappropriation claim that would be subject to indemnification rights set forth in this Section 9, Duo Security shall have the option, at its expense, to (i) modify the Software to be non-infringing; or (ii) obtain for Customer a license to continue using the Software. If Duo Security determines it is not commercially reasonable to perform either of the above options, then Duo Security may at its option elect to terminate the license for the Services and refund the unearned portion of any pre-paid subscription Fees, pro-rated on a monthly basis. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT, MISAPPROPRIATION AND/OR CLAIMS ALLEGING INFRINGEMENT OR MISAPPROPRIATION.

10. TERM; TERMINATION

10.1 Subject to earlier termination as expressly provided for in this Agreement, the initial Term of this Agreement shall be for the Term specified in the Order Form, or in the event of multiple Order Forms, until the Term of all Order Forms has expired. Each Order Form and this Agreement shall terminate upon expiration or termination in accordance with this Section 10 unless Customer provides at least forty-five (45) days written notice to Duo Security that it wishes to renew or to have Duo Security renew the Services through GSA MAS contract. The Fees per User for each renewal Term will be in accordance with the GSA MAS contract or, if renewed directly with Duo Security, equal to the Fees per User for the immediately prior Term plus a price increase to be agreed upon by Duo Security and Customer. Any price increase will not exceed seven percent (7%) per year, unless the pricing was designated in the applicable Order Form as promotional or one-time; provided, however, the Fees for each renewal Term shall not exceed the list price as of the start date of such renewal Term.

10.2 In the event of any material breach of this Agreement, the GSA MAS Contractor, on behalf of Duo Security, shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in GSAR 52.212-4(d).

10.3 The Sections of this Agreement which by their nature should survive termination or expiration of this Agreement, including but not limited to Sections 3.1 and 4 through 14 (inclusive), will survive termination or expiration of this Agreement. No refund of Fees shall be due in any amount on account of termination by Duo Security pursuant to this Section 10. In the event of termination by Customer pursuant to this Section 10, Customer shall be entitled as its sole and exclusive remedy, to receive a refund of any pre-paid subscription Fees paid by Customer to Duo Security for Services not rendered as of the termination date. When this Agreement expires or terminates, Duo Security shall cease providing the Service to Customer.

11. WARRANTIES AND DISCLAIMER OF ADDITIONAL WARRANTIES

11.1 For Customers enrolled in one of the editions of Services requiring purchase, Duo Security represents and warrants that it will not knowingly include, in any Duo Security software released to Users and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or User data. If, at any time, Duo Security fails to comply with the warranty in this Section 11.1, Customer may promptly notify Duo Security in writing of any such noncompliance. Duo Security will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement and receive a refund of any pre-paid but unearned subscription Fees, pro-rated on a monthly basis, as its sole and exclusive remedy for such noncompliance.

11.2 For Customers that have purchased Hardware Tokens as part of the Services, Duo Security warrants to Customer only that Hardware Tokens will be free of defects in material and workmanship at the time of sale and for a period of six (6) months thereafter. This limited warranty is limited to replacement of defective Hardware Tokens. This limited Hardware Token warranty is Customer's exclusive remedy for defective Hardware Tokens.

11.3 EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 11, THE SERVICES AND DUO SECURITY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. DUO SECURITY HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PURPOSE OR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

12. LIMITATION OF LIABILITY

12.1 NOTHING IN THIS AGREEMENT (OR ANY ORDER FORM) SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR

SUBCONTRACTORS; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

12.2 SUBJECT TO SECTION 12.1, IN NO EVENT WILL DUO SECURITY OR ITS SUPPLIERS BE LIABLE TO CUSTOMER (OR ANY PERSON CLAIMING UNDER OR THROUGH CUSTOMER) FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, (I) LOSS OF REVENUE OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT) OR (II) LOST BUSINESS OR (III) LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF DUO SECURITY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

12.3 SUBJECT TO SECTION 12.1, THE TOTAL LIABILITY OF DUO SECURITY FOR ANY CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID OR TO BE PAID TO DUO SECURITY HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM IS FIRST ASSERTED, PROVIDED, HOWEVER THAT THE MAXIMUM LIABILITY OF DUO SECURITY FOR ALL CLAIMS SHALL BE THE THEN CURRENT ANNUALIZED VALUE OF THE APPLICABLE ORDER FORM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13. U.S. GOVERNMENT MATTERS
Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

14. MISCELLANEOUS
14.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

14.2 Assignment. This Agreement is not assignable, transferable or sublicensable by either party except with the other party’s prior written consent, which shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

14.3 Entire Agreement; Amendment. Both parties agree that this Agreement and the GSA MAS Contract into which the Agreement is incorporated is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers, amendments and modifications must be in a writing signed by both parties and specifically reference the provision of this Agreement being waived, amended or modified, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Duo Security in any respect whatsoever.

14.4 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Duo Security may provide notice using the information provided in the most recent Order Form and Customer may provide notice using the contact information provided on duosecurity.com.

14.5 Force Majeure. Any delay or failure in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay or failure is due to a labor dispute, fire, earthquake, flood or any other event beyond the reasonable control of a party, provided that such party promptly notifies the other party thereof and uses reasonable efforts to resume performance as soon as possible.

14.6 Governing Law; Arbitration. This Agreement will be governed by the Federal law.

14.7 Publicity. Upon the Customer’s prior written consent, Duo Security may mention Customer’s name in press announcements, case studies, trade shows, or other marketing or advertising materials.
Appendix A

Service Level Agreement

Duo Security SLA During the term of your Duo Security license (the “Agreement”, the Duo web admin interface and web services will be operational and available to Customer at least 99.9% of the time in any calendar month (the “Duo Security SLA”). If Duo Security does not meet the Duo Security SLA, and if Customer meets its obligations under this Duo Security SLA, Customer will be eligible to receive the Service Credits described below. This Duo Security SLA states Customer’s sole and exclusive remedy for any failure by Duo Security to meet the Duo Security SLA.

Definitions The following definitions shall apply to the Duo Security SLA.

- “Downtime” means when there is more than a five percent user error rate across all of a Customer’s users. Downtime is measured based on server side error rate.
- “Service” means the Duo Security multifactor authentication service.
- “Monthly Uptime Percentage” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.
- “Service Credit” means the number of days of Service to be added to the end of the Service term, at no charge to Customer calculated as follows:

<table>
<thead>
<tr>
<th>Uptime</th>
<th>Days Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.9% - ≤ 99.0%</td>
<td>3</td>
</tr>
<tr>
<td>&lt; 99.0% - ≤ 95.0%</td>
<td>7</td>
</tr>
<tr>
<td>&lt; 95.0%</td>
<td>15</td>
</tr>
</tbody>
</table>

Customer Must Request Service Credit In order to receive any of the Service Credits described above, Customer must notify Duo Security within thirty days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit. Customer may check whether Duo Security’s systems are operational by visiting https://status.duo.com.

Maximum Service Credit The aggregate maximum number of Service Credits to be issued by Duo Security to Customer for all Downtime that occurs in a single calendar month shall not exceed fifteen days of Service (or the value of 15 days of Service in the form of a monetary credit to a monthly-billing Customer’s account). Service Credits may not be exchanged for, or converted to, monetary amounts.

Duo Security SLA Exclusions The Duo Security SLA does not apply to any services that expressly exclude this Duo Security SLA (as stated in the documentation for such services) or any performance issues: (i) caused by “Force Majeure” or (ii) that resulted from one or more of Customer’s equipment or third party equipment not within the primary control of Duo Security.

Duo Security reserves the right to modify this Service Level Agreement at any time by updating the terms on https://www.duo.com/legal sla.
Appendix B
Privacy Policy

PRIVATE POLICY
Last updated: March 24, 2016

Who We Are
Duo Security, Inc. is a company incorporated under the laws of the State of Delaware, USA and whose principal office is located at 123 North Ashley Street, Suite #200, Ann Arbor, Michigan 48104, USA.

In this Privacy Policy when we refer to “Duo Security” or “we”, “us” or “our”, we mean either Duo Security Inc. or the relevant Duo Security group company which provides you with our services and mobile and web-based applications, (including Duo Security UK Limited) as more completely described on our Website (collectively, the “Services”). Duo Security is committed to protecting the privacy of individuals who visit our websites, including, but not limited to https://www.duo.com (collectively, the “Website”) and the customers and users of our services and mobile and web-based applications.

Terms not otherwise defined in this Privacy Policy have the meanings assigned to them in Duo Security’s Service Terms and Conditions. When you access and use the Services, the Service Terms and Conditions and this Privacy Policy apply.

If you have any questions about how we collect, store and use personal information, or if you have any other privacy-related questions, please contact us by any of the following means:

By post: Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA
By facsimile: 1-866-760-4247
By email: security@duosecurity.com

Introduction

This Privacy Policy describes how we collect, use, and share Personal Information (as defined below) created, inputted, submitted, posted, transmitted, stored or displayed by individuals who interact with and use the Duo Security Website and Services. This Privacy Policy does not apply to Personal Information (as defined below) we obtain in our capacity as an employer; employment related data is covered under separate policies and/or notices.

This Privacy Policy covers information we collect online, not offline.

Any Personal Information we collect through the Services will be used only in a manner consistent with this Privacy Policy. When you sign up for, access the Services, including blog updates or newsletters, or when you email us for information, you expressly agree to the use of your information for the purposes described in this Privacy Policy.

If you do not agree with the use of personal information as described in this Privacy Policy or any changes to it, you should not sign up for, use or access the Services or any features of the Services.

Changes to Our Privacy Policy

We may revise this Privacy Policy from time to time. The most current version of this Privacy Policy will govern your use of your Personal Information. If we decide to change our Privacy Policy, we will post the updated Privacy Policy on the Website and update the Privacy Policy modification date. Please check back regularly to review any changes to this Privacy Policy. By continuing to use the Service after those changes become effective, you agree to be bound by the revised Privacy Policy.

Personal Information

“Personal Information” is defined slightly differently across the world, but we define “Personal Information” as any information that could be used to identify you or another individual, such as (but not limited to) an individual’s name, email address, or telephone number, and that is not otherwise publicly available. Personal Information may include other types of information as well, such as some of the information referred to under the subheadings “Device-Specific Information” and “Service Log Information.”

We also collect non-personal information that does not, on its own, identify any individual person. When non-personal information is combined with other information so that it does identify an individual person, we treat that information as Personal Information.

What Information do we collect?

When you use the Services we may collect, store and process certain information about you, including:

Contact Information.
Duo Security may collect, store and process the following contact information in order to provide the Services:

For Organization Users: If your user profile is created by or at the request of an organization (an “Organization”) of which you are an employee, contractor, member, agent or other participant (each such user referred to as an “Organization User”) your “Organization’s Administrator” may provide us with certain Personal Information, such as your name, email address, and telephone number. We also collect your Organization name and assign you an account name based on your Organization name. Prior to authorizing you to become a user of the Services, your Organization is responsible for notifying you and/or obtaining your consent to the collection of such information, in accordance with applicable laws. Even though your Organization has notified you and/or received your consent to provide us with your Personal Information, when you begin using the Services, you are also providing your consent to the terms in this Privacy Policy and our Service Terms and Conditions.

For Personal Edition Users: If you establish a “Personal Edition” account (as compared to an Organization account), and/or if you sign up for our newsletters and email updates we may collect your name, email address, and telephone number.

For Organization Administrators: for each Organization account we may collect the name, email address, and telephone number of any Organization Administrators, or similar points of contact, within the Organization in order to be able to provide you and the Organization with the Services and to manage your account.

We also collect your email address when you email us for information or sign up for our newsletters and email updates. You can unsubscribe from our newsletters and updates by clicking “Unsubscribe” at the bottom of the newsletter or email update or by emailing mop@duosecurity.com.

Public Forums: We collect other information, including Personal Information that you submit to our Website or as you participate in certain interactive features of our Services (such as the publicly accessible blogs or community forums). You should be aware that any information (including Personal Information) you provide in these areas may be read, collected, and used by others who access them. To request...
removal of your Personal Information from our blog or community forum, contact us at security@duosecurity.com. In some cases, we may not be able to remove your Personal Information, in which case we will let you know if we are unable to do so and why.

Testimonials/Reviews/Feedback: We may post customer testimonials on our Website, which may contain Personal Information. We do obtain the customer’s consent via email prior to posting the testimonial to post their name along with their testimonial. If you want your testimonial removed, please contact us at security@duosecurity.com.

Surveys: We may provide you the opportunity to participate in contests or surveys. If you participate, we will request and collect certain Personal Information from you at the time of the survey. Participation in these surveys or contests is completely voluntary and you have a choice whether or not to disclose this information. The requested information typically includes contact information, such as email or phone number.

When you use the Service we may collect, store and process certain information collected by us from your web browser or from interactions with the Services, including:

Device-Specific Information. We also collect device-specific information (e.g. mobile and desktop) from you in order to provide the Services. Device-specific information includes:

- attributes (e.g. hardware model, operating system, web browser version, as well as unique device identifiers and characteristics (such as, whether your device is “jailbroken,” whether you have a screen lock in place and whether your device has full disk encryption enabled));
- connection information (e.g. name of your mobile operator or ISP, browser type, language and time zone, and mobile phone number); and
- device locations (e.g. internet protocol addresses and Wi-Fi).

We may need to associate your device-specific information with your Personal Information on a periodic basis in order to confirm you as a user and to check the security on your device.

Service Log Information. When you use the Services, we may automatically collect and store certain information in server logs. This may include which users (by reference to certain Personal Information such as the user's: username; email address; name; and other information that may be included in open textual fields) are accessing the Services, how users are accessing the Services (including the device-specific information referenced above and type of integration (i.e. application) being protected), the dates and times you are accessing the Services, from where you are accessing the Services (by internet protocol address) and device event information such as crashes, system activity, and hardware settings. We may need to associate this information with other information we collect about you on a periodic basis in order to confirm you as a user and to check the security on your device. We may also do this to improve the Services that we offer you.

Social Media Widgets: Our website includes plugins of social media platforms, such as facebook.com of Facebook Inc., 1601 S. California Ave, Palo Alto, CA 94304, USA; Twitter: som of Twitter Inc., 795 Folsom St., Suite 600, San Francisco CA 94107, USA; and google+ of Google Inc., 1600 Amphitheatre Parkway Mountain View, California, 94043, USA. Social Media Features and Widgets are either hosted by a third party or hosted directly on our websites.

- You can generally identify the plugins by the respective network's logo, for instance in combination with a pictogram of a clenched hand with a raised thumb or the addition of a “recommendation”, “like” or “comment.”

Details about purpose and extent of data collection as well as processing and usage of the data by the social media networks can be obtained by reading the privacy policies of Facebook [https://www.facebook.com/policy.php], Twitter [http://twitter.com/privacy] and Google [https://www.google.com/policies/privacy/].

How do we use the Information We Collect?

Information we collect may be used for the following purposes:

- to provide the Services;
- for billing purposes;
- to personalize the Services and improve your experience;
- improving our products, technology and services;
- for analytical purposes, including use of “Performance Data”. Performance Data includes aggregate, de-identified usage information and other aggregate measures of the Services’ performance. We may share aggregated, de-identified Performance Data with third parties to help us better understand our customers’ needs and improve the Services;
- for marketing and advertising purposes, including sending you promotional email messages about our products and services and registering you for our events. If you do not want us to use your data in this way, please opt out here: https://go.duosecurity.com/UnsubscribePage.html or send an email to mops@duosecurity.com. For more information about how to change your preferences and to unsubscribe from promotional materials, then please see the section headed “Choice and Consent”. Duo Security does not market or advertise to Organization Users;
- to prevent, detect, identify, investigate, respond and protect against potential or actual claims, liabilities, prohibited behavior, and criminal activity;
- to comply with and enforce applicable legal requirements, agreements and policies;
- to perform other activities consistent with this Privacy Policy;
- to improve the Services and where you have agreed, to provide you updates on how we are improving the Services based on any feedback you might have given; and
- with respect to Organization Users, to provide you and the Organization with the Services and to manage your account.

Data Retention

The time periods for which we retain your Personal Information depend on the purposes for which we use it. We will retain your information for as long as your account is active or as needed to provide you the Services, unless we are required by law to dispose of it earlier or to
keep it longer. We will also retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements. Please contact us as provided in the Notice section below if you have any questions about the information we collect and/or how we use the information we collect.

Sharing of Personal Information Collected
Duo Security does not sell, rent, or trade and, except as described in this Privacy Policy, does not share any Personal Information with third parties for their promotional purposes. Duo Security may transmit or share Personal Information as follows:

- We may share Personal Information, with our authorized third party vendors, consultants, service providers and hosting partners (currently Amazon Web Services) who perform services for Duo Security (including hardware, software, networking, storage, and other technology and services required to operate, maintain and provide support related to the Services) based on Duo Security’s instructions. These third parties may only use or disclose such Personal Information obtained from Duo Security to perform the Services on Duo Security’s behalf or comply with legal obligations.

- If you have an Organization account, we may also share Personal Information and/or Device-Specific Information with your Organization and/or your Organization’s third party vendors (with your employer’s consent) in order to operate and maintain the Services. Your device may be subject to your Organization’s policies and practices, which are separate from this Privacy Policy. We have no control over your Organization and your Organization’s third party vendors’ privacy practices, so please read their applicable privacy policies. Our Privacy Policy does not apply to, and Duo Security is not responsible for, use of your Personal Information by these other companies.

- We may share your Personal Information with third parties to send emails on our behalf, and/or for sponsored marketing and promotional events (such as conference events) offered in conjunction with another company or companies. If you register for or participate in such marketing and promotional events, both Duo Security and such other companies may receive information collected in conjunction with the co-branded and/or co-sponsored marketing and promotional events. Our Privacy Policy will apply to you with respect to our use of your Personal Information. We have no control over any other companies’ privacy practices, so please read their applicable privacy policies before providing any Personal Information. Our Privacy Policy does not apply to, and Duo Security is not responsible for, use of your Personal Information by these other companies.

- Duo Security may share information internally with other members of the Duo Security family of companies, including Duo Security UK Limited (a company registered in England and Wales) for the purposes described in this Privacy Policy.

- We may also disclose Personal Information; (i) if we are required to do so by law or legal process; (ii) to respond to subpoenas, court orders, or legal process, or to establish or exercise our legal rights or defend against legal claims; (iii) as may be required for the purposes of national security; (iv) when we believe disclosure is necessary and appropriate to prevent physical, mental, financial or other harm, injury or loss; (v) in connection with an investigation of suspect or actual illegal or inappropriate activity or exposure to liability. We may also share such information if we believe it is necessary in order to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of our Service Terms and Conditions and any other agreements, or as otherwise required by law or to comply with any legal obligation.

When we share Personal Information with a third party, they must contractually agree to comply with privacy and security standards at least as stringent as Duo Security’s when it is handling similar data. When you provide data directly to the third party, the processing is based on their standards (which may or may not be the same as Duo Security’s) and your own independent relationship with that provider.

By accessing, signing up for or using the Services, sending us email, or by signing up for email updates, you provide your express consent to our disclosure of your Personal Information to our third party service providers (such as credit card processors, managed hosting service providers, sub-processors of service data, and technology partners) in order to supply our Services. We do not permit our service providers to use your Personal Information for their own marketing purposes or for any other purpose than in connection with the services they provide to us.

Credit Card Information
Some of our customers use credit cards, debit cards or other means of payment for our Services. We do not collect credit card, debit card or personal financial account information through our Website. We use a third party vendor, currently Recurly, Inc., to process our subscription billing. When you provide payment information to pay for the Services, you provide it directly to Recurly, and not to Duo Security. You will automatically be routed to the Recurly website to provide the information Recurly requires to process your transaction. Recurly is a third party vendor and has its own privacy policy, which may be different from this Privacy Policy. This Privacy Policy does not cover information collected by Recurly and Duo Security is not covered by, or responsible for, Recurly’s privacy practices or policy. To learn about Recurly’s privacy practices, please read their privacy policy at http://recurly.com/legal/privacy.

Accessing and Updating Your Personal Information
You can modify your account information at any time by using the Service administrative interface available at https://admin.duosecurity.com or by emailing our customer support at support@duosecurity.com. We will respond to your request to access promptly and within no more than 30 days.

Cookies and other Tracking Technologies
When you visit our Website or use our Services, we use “cookies” and other tracking technologies like “web beacons” to allow us to remember your user preferences, to maximize the performance of our Website and Services, enhance and personalize your experience and provide marketing communications. They also help ensure that advertisements you see while you are on our Website are more relevant to your interests.

For further information about cookies and the other tracking technologies we use, along with information about how to disable or block cookies, please see our Cookie Policy at https://www.duo.com/legal/cookies.

Security of Information
Duo Security maintains and uses reasonable administrative, organizational, technical and physical safeguards to protect your information from loss, destruction, misuse, unauthorized access or disclosure as required by applicable law. These technologies help ensure that your data is safe, secure, and only available to you and to those you provided authorized access (e.g., your users). For example, when you enter confidential information (such as login credentials or information submitted from within the Service), we encrypt the transmission of that information using secure socket layer technology (SSL). SSL technology is designed to prevent you from inadvertently revealing personal information using an insecure connection. However, no electronic transmission over the Internet or information storage technology can be guaranteed to be 100% secure, so you should take care in deciding what information you send us in this way. If you have any questions about security on our Website, you can contact us at security@duosecurity.com.
Cookies do not typically identify you as an individual, just the device you are using. For further information on cookies, visit our Privacy Policy. Cookies may include but are not limited to the following:

1. **Cookies** are small files that are sent to your browser or hard drive when you visit a website. They help the website remember information about you, such as your preferences and your login status. Cookies can also help a website provide a better user experience by remembering your preferences and remembering what you have done on a website.

2. **Session Cookies** are temporary cookies that are stored in your browser until you close your browser. They are used to maintain your login status and other temporary information.

3. **Persistent Cookies** are stored on your computer or device with an expiry date. They are used to remember information about you, such as your preferences and your login status.

4. **Cookies** can also help a website to track your usage of the site, including how to see what cookies have been set on your device and how to manage and delete them. For more information, please review our Privacy Policy.
What Cookies Do We Use And Why?

When you visit our Website or use our Services, we use cookies, web beacons and other technologies for a variety of purposes, such as, to allow us to remember your user preferences; to maximize and analyze the performance of our Website and Services; and to analyze our performance. We also use cookies to provide, enhance and personalize certain aspects of the Services. Cookies are also used for targeting purposes as described below.

There are four different types of cookies we use:

**Essential cookies.** These are cookies that are required for the operation of our Services. For example, when you download certain online technologies, a cookie is set that identifies the software, version, and when it expires. We may use this information to alert you that a newer version of such software is available and/or if your subscription is going to expire. These cookies are necessary for the Services to operate properly. Without these cookies, services that you have asked for cannot be provided. We want you to understand these essential cookies, and why we use them, but we don’t need to get your consent to use them on our Services as we use these cookies only to provide you with services that you have requested.

**Functionality cookies.** These cookies allow our Services to remember choices you make, such as: remembering your username, preferences and settings; remembering if you’ve filled in a survey or taken part in a poll or contest or otherwise reacted to something on or through the Services, so you’re not asked to do it again; remembering if you’ve used any of our Services before; restricting the number of time you are shown a particular advertisement; remembering your location; and enabling social media components like Facebook or Twitter. The aim of these cookies is to provide you with a more personal experience so that you don’t have to reset your preferences each time you use our Services. We also use functionality cookies to enable you to comment on an article or provide enhanced services such as enabling you to view a video through the Services. As described below, you may disable any of these functional cookies; but if you do so, then various functions of our Services may be unavailable to you or may not work the way you want them to.

**Analytical/Customization cookies.** These cookies collect information about how visitors use and interact with our Services, for instance which pages they go to most often. These cookies also enable us to personalize content, greet you by name, and remember your preferences (e.g., your choice of language, country, or region). These cookies help us improve the way our websites work and provide a better, personalized user experience. Some of our analytical/customization cookies are managed for us by third parties. However, we don’t allow the third party to use the cookies for any purpose other than those listed above.

**Advertising/ targeting cookies.** These cookies record your visit to our websites, the pages you have visited, and the links you have clicked. They gather information about your browsing habits and remember that you have visited a website. We (and third-party advertising platforms or networks) may use this information to make our websites, content, and advertisements displayed on them more relevant to your interests (this is sometimes called “behavioral” or “targeted” advertising). These types of cookies are also used to limit the number of times you see an advertisement as well as to help measure the effectiveness of advertising campaigns.

To find out more about interest-based ads and your choices, visit these sites: Digital Advertising Alliance, the Network Advertising Initiative, and the Interactive Advertising Bureau (IAB) Europe and these links: http://www.allaboutcookies.org or http://www.youronlinechoices.com.

**What Specific Cookies Do We Use In the Website and the Services?**

Some of the cookies we commonly use are listed in our cookies chart below. This list is not exhaustive, but it is intended to illustrate primary reasons for certain types of cookies set by Duo Security and third parties on our Website and Services. Third parties may also set certain cookies on your device when you use our Services. In some cases, the third party has been hired to provide certain services on Duo Security’s behalf (e.g., website analytics).

<table>
<thead>
<tr>
<th>Service Purpose</th>
<th>Cookie Name</th>
<th>Duration</th>
<th>Strictly</th>
<th>Category Necessary</th>
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<tr>
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<td>Type</td>
<td>Duration</td>
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GS-35F-0511T
https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/

Page 433
<table>
<thead>
<tr>
<th>Service</th>
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<td>xxxx</td>
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<td>fdc</td>
<td>xxxx</td>
<td>yyyyy Depends on admin config</td>
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**Google Analytics**

We use Google Analytics, a web analysis tool of Google Inc., 1600 Amphitheatre Parkway Mountain View, California, 94043, USA, ("Google"). Google Analytics uses “cookies” to track visitor interactions, which are text files being saved to your computer to help us analyze visits of our Website and how our Services are used. For example, by using cookies, Google can tell us which pages our users view, which are most popular, what time of day our websites are visited, whether visitors have been to our websites before, what website referred the visitor to our websites, and other similar information.

For more information about Google analytic cookies, please see Google’s help pages and privacy policy:
- Google Privacy Policy: https://www.google.com/policies/privacy/
- Google Analytics Help: https://developers.google.com/analytics/devguides/collection/analyticsjs/cookieusage
If you do not want your usage of our Website and Services to be analyzed by Google, you can disable Google Analytics by using an add-on in your Internet browser. You can download and install the add-on at: https://tools.google.com/dlpage/gaoptout?hl=fr.

**Google AdWords**

We use Google AdWords Remarketing to advertise Duo Security. AdWords Remarketing will display relevant ads tailored to you based on what parts of the Duo Security website you have viewed by placing a cookie on your machine. This cookie does not identify you or give access to your computer. The cookie is used to identify you as a visitor to certain of our web pages and enables use to show you ads relating to that page.

**Google AdWords Remarketing**

Remarketing allows us to tailor our marketing to better suit your needs and only display ads that are relevant to you. If you do not wish to participate in our Google AdWords Remarketing, you can opt out by visiting Google’s Ads Preferences Manager. You can also opt out of any third-party vendor’s use of cookies by visiting http://www.networkadvertising.org/choices/ or http://www.youronlinechoices.com. Another way to opt out is to use a Google browser plugin: https://tools.google.com/dlpage/gaoptout/

If you wish to opt-out of Google Advertising, you may visit https://www.google.com/settings/ads and under “Ads on Google” and/or under “Google Ads Across the Web,” and click the “Opt out” link.

**Targeting**

We give you the option to share our stories on social networks such as Facebook and Twitter. To deliver this service we link to the third party websites AddThis and Shareaholic. If you use our share buttons, you will be directed to a website controlled by AddThis and Shareaholic. We have no control over the cookies that AddThis and Shareaholic set when you use its services. You can opt out of AddThis cookies at http://www.addthis.com/privacy/opt-out and Shareaholic cookies at https://shareaholic.com/privacy/choices.

**Additional Third Party Cookies**

We occasionally link to external websites or other third party content. If you click on external links, you will be directed to a website controlled by a third-party. We have no control over the cookies that the third-party sets when you use its service.

**How to Delete And Block Our Cookies**

You can disable and/or delete cookies by activating the setting on your browser that allows you to refuse the setting of all or some cookies. However, if you use your browser settings to block all cookies (including essential cookies), you may not be able to access all or parts of our Website. Unless you have adjusted your browser setting so that it will refuse cookies, our system will issue cookies as soon as you visit our Website.

These settings are usually found in the “options” or “preferences” menu of your internet browser. In order to understand these settings, the following links may be helpful. Otherwise you should use the “Help” option in your Internet browser for more details. The following links provide information on how to modify the cookie settings on some popular browsers.

- **Firefox**: https://support.mozilla.org/en-US/kb/cookies-information-websites-store-on-your-computer
- **Chrome**: https://www.google.com/policies/technologies/managing/
- **Safari**: http://support.apple.com/kb/HT1677

**Can I Withdraw My Consent?**

If you wish to withdraw your consent at any time, you will need to delete your cookies using your Internet browser settings. For further information about deleting or blocking cookies, please visit: http://www.aboutcookies.org and http://www.youronlinechoices.com. While many companies involved in using advertising cookies and serving online behavioral advertising appear at the above links, not all do. Therefore, even if you choose to turn off cookies used by all of the companies listed, you may still receive some advertising cookies and some tailored advertisements from other companies.

You can also manage this type of cookie in the privacy settings on the web browser you are using. Please see above for more information.

**Your Consent**

By continuing to use the Website or the Services, you are agreeing to our placing cookies on your computer or other device in order to analyze the way you use the Website and in order for us to provide the Services. Please read this cookie policy carefully for more details about the information we collect when you use this Website and the Services.

If you do not wish to accept cookies in connection with your use of this Website or Services, you must stop using our Website and Services.

**Information About Cookies**

- **All About Cookies**: Useful information about cookies can be found at: http://www.allaboutcookies.org
- **Internet Advertising Bureau**: A guide to behavioral advertising and online privacy has been produced by the Internet advertising industry, which can be found at: http://www.youronlinesites.com

**Our use of Web Beacons**

We may also use electronic images known as web beacons on our Services - sometimes called “clear GIFs,” “single-pixel GIFs,” or “web bugs.” Web beacons are used to deliver cookies on our Services, count clicks/users/visitors, and deliver co-branded content or services. We may include web beacons in our promotional email messages or newsletters to determine whether messages have been opened and acted upon. The Services may also contain web beacons from third parties to help us compile aggregated statistics regarding the effectiveness of our promotional campaigns or other website operations. These web beacons may allow the third parties to set or read cookies on your device.

**Other Similar Technologies**

In addition to the aforementioned cookies and web beacons, our Website also uses other technologies to store and retrieve data from your device. This may be done to maintain your preferences or to improve speed and performance by storing certain files locally.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Eccentex ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations is enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ECCENTEX LICENSE, WARRANTY AND SUPPORT TERMS
This Agreement describes the terms and conditions that will apply to (i) subscription of Eccentex’s proprietary platform, applications templates, or software products that Ordering Activity purchases from time to time as set forth in an applicable order (the “Subscription Schedule”), (ii) maintenance and support services relating to such products as described in Schedule B (referred to herein collectively as the “Services”).

1. Privacy & Security. For informational purposes only, Eccentex’s privacy and security policies may be viewed at http://www.eccentex.com. Eccentex reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Eccentex occasionally may need to notify all licensees of its products and services of important announcements regarding the operation of the products and services.

2. License Grant & Restrictions
   a. Eccentex hereby grants Ordering Activity a non-exclusive, non-transferable (except as permitted under Section 23), worldwide right for the number of Users paid for by Ordering Activity to use Eccentex’s proprietary platform, applications templates, or software identified on the applicable Subscription Schedule (the “Licensed IP”), solely for Ordering Activity’s own internal business purposes set forth on the applicable Subscription Schedule, and subject to the terms and conditions of this Agreement, including those provided in the applicable Subscription Schedule. As used herein, “User” means a designated employee or contractor of Ordering Activity who is authorized by Ordering Activity to use the Licensed IP. Access to the Licensed IP will be via a web portal or platform provided by Eccentex and provided under a license as a Service (the “Software Service”).
   b. The license granted herein does not include the right to sublicense without the prior written consent of Eccentex, except Ordering Activity may sublicense to an Affiliate of Ordering Activity and to one or more independent contractors retained by Ordering Activity, but solely for the benefit of Ordering Activity.
   c. The license granted above is based on a per User, per case, and per environment subscription basis. Therefore, if Ordering Activity desires for additional employees or contractors beyond the number of authorized Users, cases, and/or environments stated in the Subscription Schedule, Ordering Activity must purchase additional subscriptions for such individuals, cases, and environments.
   d. Ordering Activity acknowledges that the Licensed IP contains valuable trade secrets of Eccentex and its suppliers. Accordingly, except as expressly permitted under this Agreement, Ordering Activity shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute, timeshare, outsource, lease, rent, or otherwise commercially exploit or make available to any third party the Licensed IP or any data, information, graphics, materials, or other content provided to Ordering Activity through the use of the Licensed IP (the “Content”) in any way; (ii) modify or make derivative works based upon the Licensed IP or the Content or merge the Licensed IP or the Content with other software or data; (iii) create Internet “links” to the Licensed IP or “frame” or “mirror” any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer, decompile, or access the Licensed IP or any Content in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Licensed IP, or (c) copy any ideas, features, functions or graphics of the Licensed IP.
   e. User’s Content can only be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Licensed IP. Ordering Activity will ensure that each username and password issued to a User will be used only by that individual. Ordering Activity is responsible for maintaining the confidentiality of all Users’ usernames and passwords and is solely responsible for all activities that occur under these usernames.
   f. Ordering Activity may use the Licensed IP only for Ordering Activity’s internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) use, send, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violate third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Licensed IP or the data contained therein; (v) attempt to gain unauthorized access to the Licensed IP or its related systems or networks; or (vi) otherwise use the Licensed IP to carry out any infringing or unlawful activities.

3. Maintenance and Support. Eccentex will provide the maintenance and support services for the Licensed IP to Ordering Activity as set forth in Schedule B.

4. Ordering Activity Responsibilities
   a. Ordering Activity is responsible for all activities occurring under Ordering Activity’s User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Ordering Activity’s use of the Licensed IP, including those related to data privacy, international communications and the transmission of technical or personal data. Ordering Activity shall: (i) notify Eccentex immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Eccentex immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Ordering Activity or Ordering Activity’s Users; and (iii) not impersonate another Eccentex user or provide false identity information to gain access to or use the Licensed IP.
   b. To the extent Ordering Activity is licensed to use Eccentex’s proprietary platform and/or applications templates to develop or configure a customized application (“Ordering Activity Application”), Ordering Activity acknowledges that it shall be responsible for the accuracy, quality, integrity and legility of the Ordering Activity Application, content and data and for the quality and configuration of the Ordering Activity Application and the performance of the Ordering Activity Application.

5. Account Information and Data
   a. Eccentex does not own any data, information or material that Ordering Activity submits to Eccentex in the course of using the Software Service (“Ordering Activity Data”). Eccentex will not modify the Ordering Activity Data or disclose the Ordering Activity Data; provided however, Eccentex may retain, use, and disclose to any third parties Ordering Activity Data if Ordering Activity Data is aggregated with similar data collected from other Ordering Activitys and does not disclose Ordering Activity as the source of the Ordering Activity Data.
   b. Ordering Activity, not Eccentex, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Ordering Activity Data, and Eccentex shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Data.
   c. During the term of this Agreement and upon termination, Eccentex will make available to Ordering Activity a file of the Ordering Activity Data within 30 days of Ordering Activity’s written request. Ordering Activity agrees and acknowledges that Eccentex has no obligation to retain the Ordering Activity Data, and may delete such Ordering Activity Data, if this Agreement is terminated, unless Ordering Activity requests to receive a copy of the Ordering Activity Data at the time of termination and pays for all outstanding fees owed to Eccentex.
   d. Upon request and issuance of an order, Eccentex will work with Ordering Activity to design custom reports designed to give access to all Ordering Activity Data. The design and estimated cost of the custom reports will be covered in a time and materials professional services statement of work.

6. Intellectual Property Ownership. Eccentex alone (and its licensors, where applicable) shall own all right, title and interest, including all related patent rights, copyright rights, trademark rights, trade secret rights, moral rights, and any other intellectual property or proprietary rights of any kind or nature (collectively, “Intellectual Property Rights”), in and to all Licensed IP and any other software, applications templates, websites, systems, and related technology used to provide the Software Services (the “Eccentex Technology”), the Content, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Ordering Activity or any other party to Eccentex relating to the Licensed IP or the Software Services (“Suggestions”), and Ordering Activity hereby assigns all right, title and interest in and to all Suggestions, and all Intellectual Property Rights therein, to Eccentex, not a sale. Furthermore, Ordering Activity is not waiving any rights to the use of the Eccentex Technology or the Intellectual Property Rights therein owned by Eccentex. There are no implied licenses granted under this Agreement. The Eccentex name, the Eccentex logo, and the product names associated with the Licensed IP and Software Services are trademarks of Eccentex or third
parties, and no right or license is granted to use them. For the avoidance of doubt, and subject to the ownership rights of Eccentex in its Licensed IP, including proprietary platform applications templates, software, and any other Eccentex Technology, any Ordering Activity Application shall be owned by Ordering Activity.

7. **Reserved.**

8. **Reserved.**

9. **Excess Data Storage Fees.** The maximum disk storage space provided to Ordering Activity at no additional charge is 1 (One) GB per User and disk storage space between Users may be shared to the extent that total storage space required for Ordering Activity does not exceed maximum space for all Users combined. Eccentex will use reasonable efforts to notify Ordering Activity when the average storage used per license reaches approximately 90% of the maximum.

10. **Reserved.**

11. **Reserved.**

12. **Reserved.**

13. **Reserved.**

14. **Representations & Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Eccentex represents and warrants that: (a) it has the right to grant to Customer the rights to the Licensed IP granted herein; (b) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (c) the Software Services will perform substantially in accordance with the online Eccentex help documentation under normal use and circumstances. As Customer’s exclusive remedy, and Eccentex’s sole and exclusive liability for any breach of the foregoing representations and warranties by Eccentex, Eccentex will promptly repair or replace the non-conforming Licensed IP or Services at no additional charge.

15. **Reserved.**

16. **Disclaimer of Warranties.** EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE LICENSED IP, THE SERVICES INCLUDING THE SOFTWARE SERVICES, OR ANY CONTENT PROVIDED HEREUNDER. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE LICENSED IP OR THE SERVICES INCLUDING THE SOFTWARE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE LICENSED IP OR THE SERVICES, INCLUDING THE SOFTWARE SERVICES WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) ALL ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE LICENSED IP, THE SOFTWARE SERVICES OR THE SERVER(S) THAT MAKE THE SOFTWARE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS PROVIDED IN SECTION 14, THE LICENSED IP, THE SERVICES (INCLUDING THE SOFTWARE SERVICES) AND ALL CONTENT ARE PROVIDED TO ORDERING ACTIVITY STRICTLY ON AN “AS IS” BASIS. EXCEPT AS PROVIDED IN SECTION 14, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND IMPLIED INDEMNIFICATION ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ECCENTEX AND ITS LICENSORS.

17. **Internet Delays.** THE SOFTWARE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ECCENTEX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

18. **Reserved.**

19. **Reserved.**

20. **Reserved.**

21. **Reserved.**

22. **Government Use.** The Licensed IP is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Any technical data provided with such Licensed IP is commercial technical data as defined in 48 C.F.R. 12.211 (Sep 1995). Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), and 48 C.F.R. 252.227-7015 (Nov 1995), all U.S. Government End Users acquire the Licensed IP with only those rights set forth herein. Reserved.
Ordering Activity desires to receive a subscription to certain proprietary platform known as AppBase or application developed by or for Eccentex using such platform. All capitalized terms used herein that are not defined herein have the meanings given to them in the Agreement.

2. Usage Rights: Ordering Activity may use the Licensed IP only on the following terms:

a. License to Platform and/or Applications Templates:
   
   **PaaS Service.** If Ordering Activity desires to access the Platform and/or Applications Templates through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term (defined below), a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to (i) access and use the Platform and/or Applications Templates solely for purposes of configuring and customizing a Ordering Activity Application (described below) based on the Platform and/or Applications Templates according to the user guide provided by Eccentex, and (ii) access and use the Ordering Activity Application for internal business purposes only. Ordering Activity authorizes Eccentex (directly or through a contractor) to host, copy, transmit, display and otherwise use the Ordering Activity Application solely as necessary for Eccentex to provide the Software Services in accordance with the Agreement.

b. License to Application:
   
   License to Application: If Ordering Activity desires to access an Application through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to access the Application and use the Application for internal business purposes only.

3. Service Level Agreement: Eccentex will host the Licensed IP and use commercially reasonable efforts to provide the Software Services in accordance with the Service Level Agreement provided on Attachment 1.

### Schedule 1

**Service Level Agreement**

1. **Definitions.** As used in this Service Level Agreement, the following capitalized terms shall have the meanings ascribed thereto:
   
i. “Eligible Credit Period” is a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event for a particular Subscription included in the SLA claim occurred.

   ii. “Monthly Uptime Percentage” is calculated by dividing each hour into five minute periods, and then determining during which, if any, of those five minute periods, the Subscription was Unavailable, subtracting that number from the total number of such minute periods in the Subscription Month during which the Subscription was scheduled to be available (the “Scheduled Availability Number”) and dividing that number by the Scheduled Availability Number. If Ordering Activity has been using the Subscription for less than a full calendar month, the Subscription Month is still the preceding calendar month but any days in such month that are prior to the commencement of use of the Subscription will be deemed to have had 100% availability. Monthly Uptime Percentage measurements exclude downtime resulting from a Subscription Suspension.

   iii. “SLA” means a Monthly Uptime Percentage of at least 99% during each Subscription Month.

   iv. “Subscription” means the provision of the Instance to Ordering Activity on the terms described in the applicable order.

   v. “Subscription Month” means each applicable calendar month in which the Subscription is contracted to be provided.

   vi. “Subscription Suspension” means the unavailability of a Subscription: (a) during weekends or on weekdays between 11:00 p.m. and 5:00 a.m. EST with at least 3 days’ notice (provided via email or on Eccentex’ web site) for scheduled downtime to permit Eccentex to conduct maintenance or make modifications to the Subscription; (c) at any time in the event of a denial of service attack or other event that Eccentex reasonably determines may create a risk to the applicable Subscription; or (d) at any time in the event that Eccentex reasonably determines that suspension is necessary for legal or regulatory reasons.

   vii. “Unavailable” or “Unavailability” means that all of the running Instances are unresponsive during a five minute period and Ordering Activity is unable to launch replacement Instances.

2. **Software Service Levels.** Eccentex will use commercially reasonable efforts to make each Subscription available within the SLA. If the Monthly Uptime Percentage is less than 90% in more than three (3) months during any twelve (12) months period, Ordering Activity may terminate this Agreement for material breach.

3. **Suspension of Subscription**

   a. Ordering Activity acknowledges that Ordering Activity’s access to and use of a Subscription may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Eccentex’s reasonable control.

   b. Eccentex will have no liability for any damage, liabilities, or other losses that Ordering Activity may incur as a result of any Subscription Suspension. Eccentex will use reasonable efforts to provide Ordering Activity email notice of any Subscription Suspension and updates regarding resumption of the Subscription following any such suspension.

4. **Security**

   a. Eccentex agrees that it will use commercially reasonable efforts to adhere to the security protocols described on Attachment 2.

   b. Other than the Eccentex security protocols described on Attachment 2, Ordering Activity acknowledges that it is responsible for security, protection and backup of its content, data and Ordering Activity Applications. Eccentex strongly encourages Ordering Activity, where available and appropriate, to (a) use encryption technology to protect Ordering Activity’s content and data from unauthorized access, and (b) routinely archive Ordering Activity’s content and data. Ordering Activity is fully responsible for all Ordering Activity Applications running on, and traffic originating from, each Instance. Ordering Activity should protect its authentication keys and security credentials. Actions taken using Ordering Activity’s credentials will be deemed to be actions taken by Ordering Activity and will be the responsibility of Ordering Activity.

### Security Protocols

a. **Access Control:** Implement access control measures restricting access to applications, data, and software to only those entities that have a

requirements of the security policies required by the Ordering Activity (HIPAA, SOX, and/or others as required). Access to the controlled systems shall be locked down by subnet, port, protocol, server, role, and user to allow only the access required for the business function.

b. Audit Controls: Implement audit control mechanisms to record, monitor, and examine system activity, including data access activities. Maintain full logs of monitored activities for at least three years trailing.

c. Authorization Control: Implement a mechanism for controlling the authorization of individuals, organizations, and roles to access applications, data, and software. Integrate with Ordering Activity’s existing identity management solution where one exists to enable single sign-on and centralized identity management. Ensure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons. Ensure that system users, including technical maintenance personnel are trained in system security.

d. Data Authentication: Create audit trail providing corroboration that data has not been altered or destroyed in an unauthorized manner.

e. Entity Authentication: Implement entity authentication technologies, including automatic logout and unique user identification through a password or equivalent system. Passwords or other user tokens shall be required to follow robust, documented policy requirements including:
   a. Periodic reset/renewal every six months or less (Password ageing)
   b. Complexity and length requirements in the case of passwords
      i. No dictionary words
      ii. No dates
      iii. Mixed character types (at least three of lowercase, uppercase, numerals, and punctuation)
   c. Lockouts after five unsuccessful authentication attempts

f. Encryption at Rest: Sensitive data shall be encrypted whenever stored in the database or in persisted memory using the highest possible encryption in compliance by the specific country.

g. Encryption in Flight: Communications over a network containing sensitive data shall be encrypted through SSL

h. Business Continuity: Implement and document business continuity and disaster recovery procedures, including but not limited to incremental data backups taken daily and stored for three weeks trailing, and full data backups taken weekly and stored for three years trailing.

i. Audits and Policy Compliance: Documentation and implementation of security policy shall be prepared and supplied to the Ordering Activity on demand for ALL of the following policy components:
   a. A data backup plan
   b. A disaster recovery plan
   c. An emergency mode operation plan
   d. Testing and revision procedures
   e. Access authorization policies and procedures
   f. Security testing
   g. Virus checking
   h. Security incident response procedures
   i. Personnel clearance procedures

j. Assigned Security Responsibility: Assign and document the assignment of security responsibility to a specific individual or role within the Software Service provider organization. This responsibility would include the management and supervision of the use of security measures and the conduct of personnel.

k. Physical Security: Implement and document physical access controls (limited access) governing the Software Service provider's location(s) that are used to access Ordering Activity's applications, data, and software.

Schedule B

Maintenance and Support Terms

1. General. Eccentex includes support and maintenance services with the Software Services. Support and maintenance services are as described below.

2. Maintenance and Support Services. Maintenance and Support Services include:
   (i) Maintenance Releases and Upgrades: During the term, Eccentex agrees to deliver to Ordering Activity without charge any upgrades containing error corrections or enhancements to the Licensed IP (“Upgrades”).
   (ii) Standard Telephone Support: Subject to Section 3 below, Eccentex will implement commercially reasonable efforts to provide Ordering Activity live telephone and email support during normal business hours of Eccentex (Monday – Friday, 8:00 a.m. to 6:00 p.m. Pacific Standard Time, excluding Eccentex holidays, or at such other hours as the parties may mutually agree to, for (a) configuration issues, (b) questions regarding the usability and specific functions of the Licensed IP, (c) problem diagnosis, and (d) provision of workarounds where feasible.
   (iii) Critical Telephone Support: Subject to Section 3 below, Eccentex will implement commercially reasonable efforts to provide Ordering Activity live telephone support 24 hours per day, 7 days a week for problems where there is a complete loss of Licensed IP or a mission-critical system is down or sufficiently impaired and usability is severely affected.
   (iv) Support Liaisons: Eccentex will coordinate with up to four Ordering Activity employees designated as support liaisons to manage support calls to Eccentex.

3. Technical Support. Eccentex offers the Ordering Activity a single point of contact for all product support questions. Ordering Activity will call the technical support number and the call coordinator will work to address Ordering Activity issues, with response and escalation based on the severity of the problem.

Eccentex shall use commercially reasonable efforts to respond to problems in accordance with the “Priority Codes” set forth below. The Priority Codes below depict the priority level to be assigned by Eccentex to each issue or problem phoned in by Ordering Activity.

“A Priority” - Licensed IP is completely inoperable. Resources assigned within two (2) hours after notice.

“B Priority” - Licensed IP is inoperable but not as critical as an “A Priority”. Resources assigned within four (4) hours after notice during standard support hours.

“C Priority” - Ordering Activity has a problem with a module of the Licensed IP but there is a known workaround which does not seriously impair the operation of the Licensed IP. Resources assigned within eight (8) hours after notice during standard support hours.

“D Priority” - Minor problems which Eccentex plans, or will plan to incorporate into a future release of the Licensed IP, to be resolved in connection with the general commercial availability of such future release.

4. Data Backup. Eccentex provides ongoing data backup of configuration data as well as general user-generated data. Eccentex will keep a rolling backup of a full data snapshot per day for a timeframe minimum of 2 days.

5. Conditions. Maintenance and support apply to the standard Licensed IP made generally available by Eccentex to Ordering Activity, and not to modifications delivered as part of any professional services. Eccentex reserves the right to address defects in the next release of the Licensed.
Eccentex will not be responsible to provide service or support when the problem is the result of faulty hardware or software that (i) Eccentex did not provide or (ii) Eccentex has not contracted with Ordering Activity to support under this Agreement. Maintenance services are not on-site services.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Elasticesearch Federal, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
This SHIELD SOFTWARE LICENSE AGREEMENT (this “Agreement”) is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch’s Shield software to which a Federal Ordering Activity has issued an applicable ordering document to acquire the Shield Software subject to this Agreement. This Agreement is effective as of the earlier of the date You downloaded the Shield Software or the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You (the “Effective Date”).

1. SOFTWARE LICENSE AND RESTRICTIONS

1.1 LICENSE GRANTS.

(a) 30 Day Free Trial License. Subject to the terms and conditions of this Agreement, Elasticsearch agrees to grant, and does hereby grant to You for a period of thirty (30) days from the Effective Date (the “Trial Term”), solely for Your internal business operations, a limited, non-exclusive, non-transferable, fully up, right and license (without the right to grant or authorize sublicenses) to: (i) install and use the code object version of the Shield Software; (ii) use, and distribute internally a reasonable number of copies of the Documentation, if any, provided with the Shield Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; and (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, an otherwise provided with the applicable Software or Documentation. A hard copy of the Open Source licenses is provided to U.S. Government Licensees and End-Users.

(b) Fee-Bearing Production License. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees, Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the code object version of the Shield Software in connection with the number of nodes for which You have purchased support services from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the Documentation, if any, provided with the Shield Software, provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software.

1.2 Reservation of Rights; Restrictions. The Shield Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation (“FAR”), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Shield Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Shield Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Shield Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Shield Software in whole or in part to any third party; (iii) use the Shield Software for providing time-sharing services, any software-as-a-service offering (“SaaS”), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Shield Software; or (v) make available to any third party any analysis of the results of operation of the Shield Software, including benchmarking results, without the prior written consent of Elasticsearch.

1.3 Open Source. The Shield Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, “Open Source”), which Open Source may have applicable license terms as identified on a website designated by Elasticsearch or otherwise provided with the applicable Software or Documentation. A hard copy of the Open Source licenses is provided to U.S. Government Licensees and End-Users. Reserved.

2. RESERVED.

3. DISCLAIMER OF WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SHIELD SOFTWARE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SHIELD SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SHIELD SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE SHIELD SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE SHIELD SOFTWARE WILL BE UNINTERRUPTED.

4. RESERVED.

5. GOVERNMENT RIGHTS.

5.1 The Shield Software product is “Commercial Computer Software,” as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of “commercial computer software” and “commercial computer software documentation”. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation (“FAR”) and its successors. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.702-3 and 48 C.F.R. 227.702-4 of the DOD FAR Supplement (“DFARS”) and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Shield Software, associated commercial computer software documentation and commercial technical data, in any contract or Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

6. EXPORT CONTROL.
You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future committed to, with regard to each such export control, to comply with, the ITAR, EAR, antiboycott regulations and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Shield Software may in certain circumstances be considered a re-export of Shield Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

7. RESERVED.

8. RESERVED.

MARVEL SOFTWARE LICENSE AGREEMENT

This MARVEL SOFTWARE LICENSE AGREEMENT (this "Agreement") is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch's Marvel software to which this Agreement is attached ("Marvel Software"), or in the case of a Federal Ordering Activity, has issued a Purchase Order or similar contractual document to acquire the Marvel Software subject to this Agreement. This Agreement is effective as of the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You, or, if no Order Form applies, the date you download the Marvel Software (the "Effective Date").

1. SOFTWARE LICENSE AND RESTRICTIONS

1.1 License Grants. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees (provided that no fee shall be required for use of the Marvel Software for other than production purposes), Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Marvel Software in connection with the number of nodes for which You have purchased a license or support services, as applicable, from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Marvel Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Marvel Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in their connection with the use of the Marvel Software.

1.2 Reservation of Rights; Restrictions. Marvel Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Marvel Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Marvel Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Marvel Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Marvel Software in whole or in part to any third party; (iii) use the Marvel Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Marvel Software; or (v) make available to any third party any analysis of the results of operation of the Marvel Software, including benchmarking results, without the prior written consent of Elasticsearch. The Marvel Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source Software"), which Open Source Software may have applicable license terms. The full license terms and conditions of Open Source Software contained in or provided with the Marvel Software are set forth on a website designated by Elasticsearch or otherwise provided with the Marvel Software or Documentation. A hard copy of the Open Source Software licenses is provided to U.S. Federal Government Licensees and End-Users.

1.3 Cluster Metadata. You understand and agree that once deployed, and on a daily basis, the Marvel Software provides metadata to Elasticsearch about Your cluster statistics and associates that metadata with Your IP address. However, no other information is provided to Elasticsearch by the Marvel Software, including any information about the data You process or store in connection with your use of the Marvel Software. At no time does this feature provide access to the data You process or store, or to your network. Instructions for disabling this feature are contained in the Marvel Software, however leaving this feature active enables Elasticsearch to gather cluster statistics and provide an improved level of support to You.

2. RESERVED.

3. DISCLAIMER OF WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE MARVEL SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE MARVEL SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE MARVEL SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF

2 THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE MARVEL SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE MARVEL SOFTWARE WILL BE UNINTERRUPTED.

4. RESERVED.

5. GOVERNMENT RIGHTS.

The Marvel Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Elasticsearch Software License Agreement as specified in 48 C.F.R. 227.702-3 and 48 C.F.R. 227.702-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.702. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.702 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Marvel Software, associated commercial computer software documentation and commercial technical data, subject to this
Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

6. **EXPORT CONTROL.**
You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations (“EAR”) (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Marvel Software may in certain circumstances be considered a re-export of Marvel Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

7. **RESERVED.**
8. **RESERVED.**
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Elemental Technologies (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government, either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer agrees to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Dispute Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflicts.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ELEMENTAL TECHNOLOGIES**

**ELEMENTAL TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS**

**End User License Agreement**

1. **DEFINITIONS:**
1.1 "Product" means the Elemental software program, in object code only, provided to Ordering Activity under this Agreement; all related images, animations, video, audio, and other content incorporated in such software program; all accompanying manuals and other documentation (the "Documentation"); and all enhancements, upgrades, and extensions thereto that may be provided by Elemental to Ordering Activity from time to time.

1.2 "Licensed Configuration" means, to the extent applicable, the choice of features or any other hardware or software specifications, as selected or ordered by Ordering Activity in an Order Form, and upon which the licensing fee was based.

1.3 "License Key" means either (a) the software key code or (b) the physical USB key provided to you by Elemental (or its reseller) (a "USB License Key"), which enables the Product to operate on the Licensed Hardware for the specified Licensed Configuration, if applicable to the Product(s).

1.4 “Licensed Hardware” means the single unit of hardware (workstation, encoder, or otherwise) designated by Ordering Activity for use of the Product.

1.5 "Order Form" means a purchase order or other written or electronic document in which you specify the Licensed Hardware, specific modules and/or choice of features, and any other applicable hardware or software requirements and restrictions.

2. LICENSE AND RESTRICTIONS:

2.1 License. Subject to the terms and conditions of this Agreement, Elemental grants Ordering Activity a non-exclusive, non-transferable, limited license to use the Product, solely in machine-readable form, only on the Licensed Hardware, only for the Licensed Configuration, and only if all related license fees have been paid. Your use is further subject to any limitations set forth in the Order Form. You may use the Product for your own internal benefit and for providing goods or services to your customers; provided that such customers have no access to the Product.

2.2 General Restrictions. You may not copy the Product, in whole or in part, except that you may make and retain a reasonable number of copies solely for back-up purposes in order to re-install the Product. You also shall not use or allow the use of the Product for any of the following purposes: a) by persons not employed by or under an independent contractor relationship with you that will bind such persons to the terms of this Agreement; or b) as essential equipment in the operation of any nuclear facility, aircraft navigation, medical or communications systems or air traffic control machines, or any other use in which the failure of the Product could lead to death, personal injury or severe physical or environmental damage.

2.3 Intellectual Property. Ordering Activity acknowledge that the Product, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts are valuable intellectual property owned by Elemental and its licensors, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms or file formats of the Product by any means. You will not develop methods to enable unauthorized parties to use the Product or any copy thereof, or to use the Product or any product containing any of the concepts and ideas contained in the Product. You will not modify the Product or incorporate any portion of the Product into any other software or create a derivative work of any portion of the Product. You will not remove any copyright or other proprietary notices from the Product or any copies thereof. Elemental reserves all rights not expressly granted hereunder. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

2.4 Upgrades. This Agreement entitles you to receive any future maintenance releases, which includes any bug fixes but does not include any updates or upgrades, releases offered as a separate product or releases subject to a separate license agreement. You may use any previously-installed release of the Product at any time during the term of this Agreement for the remaining term. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) YOU HAVE NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS YOU, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLD A VALID LICENSE TO THE ORIGINAL PRODUCT AND HAVE PAID THE APPLICABLE FEE FOR THE UPGRADE, IF ANY; (2) IF INSTALLED IN ELEMENTAL EQUIPMENT, USE OF UPGRADES IS LIMITED TO ELEMENTAL EQUIPMENT FOR WHICH YOU ARE THE ORIGINAL END USER PURCHASER OR LESSEE OR YOU OTHERWISE HOLD A VALID LICENSE TO USE THE PRODUCT WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

3. MAINTENANCE AND SUPPORT. Elemental shall have no obligation to provide maintenance and support for the Product under this Agreement. Any such maintenance and support shall be provided in accordance with a separate maintenance agreement between the parties.

6. NOTICE TO U.S. GOVERNMENT END USERS: The Product is a “Commercial Item,” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §252.227-7014, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to this Agreement. Should the foregoing clauses be amended after December, 2007, then their comparable replacements or revisions shall be incorporated herein and automatically apply.

7. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY:

7.1 Limited Warranty. Elemental warrants that the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its Documentation, as it exists at the date of delivery, for a period of sixty (60) days from the date you receive the original License Key. Elemental’s entire liability and your exclusive remedy shall be, at Elemental’s option, either: (i) return of the license fee paid to Elemental for the Product, resulting in the termination of this Agreement, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. This offer is void if the media defect results from negligence, accident, abuse, or misapplication.

7.2 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 7.1, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, BOTH EXPRESSED AND IMPLIED. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW
LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

8. GOVERNMENT REGULATION: Ordering Activity agree that the Product and any related technical data will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export law. Ordering Activity will comply with all laws, regulations, permits, orders and other restrictions to the extent that they are applicable to the import or export of the Product and related technical data.

9. HIGH RISK APPLICATIONS: THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE (“HIGH RISK APPLICATIONS”). Elemental and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Applications.
EMC CORPORATION
8444 WESTPARK DRIVE
MCLEAN, VA 22102

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached EMC Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 2.121(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government, whether its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**
**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**EMC CORPORATION**

**EMC CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS**

CLICK HERE for additional EMC Corporation terms/descriptions:
(Software Use Rights, Basic/Enhanced/Premium Support Terms, Warranty/Limited Warranty/Maintenance Terms)
1. DEFINITIONS.
A. “DEFINITIONS.” means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.
B. “PRODUCTS” mean “EQUIPMENT” (which is the hardware delivered by LICENSOR to Customer) and/or “SOFTWARE” (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).
C. “LICENSE” means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp
D. “SOFTWARE RELEASE” means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.
E. “Eligible Ordering Activities” are those activities authorized under FAR 238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a “Customer.” Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as “Executive Customers.” All other Eligible Ordering Activities are referred to as “Other Customers.”

2. LICENSE TERMS.
A. General License Grant. LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer’s internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer’s use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.
B. Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software’s relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.
C. License Restrictions. All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer’s authorized internal use of the Software. Customer shall not, without LICENSOR’s prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to any other person other than Customer’s employees or contractors; or (iv) transfer Software to an Affiliate or a third party.
D. Software Releases. Software Releases shall be subject to the license terms applicable to Software.
E. Audit Rights. LICENSOR shall have the right to audit Customer’s usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer’s business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by LICENSOR pursuant to this Audit Right.
F. Disputes. For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA’s with Other Customers are not subject FAR 52.212-4 (d) Disputes.
G. Reserved Rights. All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer’s prior written consent, nor shall Customer permit any third party to do the same.
H. Other License Terms. Some Products are provided with a “clickwrap” agreement included as part of the installation and/or download process, or a “shrinkwrap” agreement included in the packaging for the Product. (i) For Products for which the LICENSOR is the licensor, the terms of this EULA shall prevail over conflicting terms in a clickwrap or shrinkwrap agreement. (ii) With regard to Products for which the LICENSOR is not the licensor, the terms of such “shrinkwrap” agreement or “clickwrap” agreement shall prevail over any other terms or conditions on or in connection with the Software. Provided the customer’s Contracting Officer in written form as an attachment to individual quotations for review and approval. Subject to Contracting Officer approval, the clickwrap or shrinkwrap agreement shall prevail over conflicting terms in the EULA with regard to Products for which the LICENSOR is not the licensor.

3. PRODUCT WARRANTY.
A. Software Warranty. LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer’s requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.
B. Warranty Duration. Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.
C. Customer Remedies. LICENSOR’s entire liability and Customer’s exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR’s then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes. LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.
D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR’s control; (iii) installation, operation or use not in accordance with LICENSOR’s instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed;
(v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR’s consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR’s then current standard rate.

E. No Further Warranties. Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

4. INDEMNITY. LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(i) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or EMC Corporation, and LICENSOR and/or EMC Corporation shall have the right to intervene through its own counsel and at its own expense; and (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR’s opinion be likely to become, the subject of a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any prepaid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer’s specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND LICENSOR’S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

5. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR’S TOTAL LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR’S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED US$1,000,000. FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR’S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer’s production systems. To the extent LICENSOR’s liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

D. Limitation Period. Unless otherwise required by applicable federal law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

E. Suppliers. The foregoing limitations shall also apply in favor of LICENSOR’s suppliers.

6. EXPORT CONTROL. The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, “Export Laws”). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

7. TERM AND TERMINATION. This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

A. EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).

B. For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR’s written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

8. MISCELLANEOUS.

A. References. LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.

B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. This EULA, GSA IT Schedule 70, and each purchase order issued pursuant to GSA IT Schedule 70 (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgment or similar document.

D. Force Majeure. Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.
E. Assignment. Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR’s prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

F. Governing Law. To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

G. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

**EMC CORPORATION**

WARRANTY AND MAINTENANCE PRICING TERMS

EMC Corporation provides a variety of warranty and maintenance support offerings for all EMC products. Maintenance terms are set forth in the EMC Product Warranty and Maintenance Table that is incorporated in the GSA Schedule. The following is a general summary of those terms.  

**EMC Product Support Availability.** EMC’s product support lifecycle is designed to help customers effectively manage their technology investments. EMC’s product lifecycle policy specifies the support duration (the “Primary Support” period) and End-of-Primary-Support (EOPS) date for most EMC products. EMC intends, subject to change at EMC’s discretion, to offer product support under EMC’s standard product maintenance terms and conditions during a product’s Primary Support period. Once a product reaches its EOPS date, EMC may, at its discretion, offer Extended Support for certain software releases or hardware models. Additional information on EMC’s support lifecycle policy and Extended Support for EMC hardware and software products can be found on the specific EMC product page, located by searching within the [Support by Product](https://www.emc.com/support) section of the EMC Online Support site. This information is subject to change at EMC’s discretion.

<table>
<thead>
<tr>
<th>Primary Support</th>
<th>Extended Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary support begins when a product is Generally Available (GA).</td>
<td>Extended Support may be available for certain releases of EMC software products and hardware models, at EMC’s discretion.</td>
</tr>
<tr>
<td>For some EMC software products that are independent of EMC hardware releases, it is EMC’s intention, subject to change at EMC’s discretion, to support the current and immediately prior software release for the period of three (3) years from the release’s GA date. EMC endeavors to publish the applicable EOPS date(s) at GA. This three-year period is referred to as the Primary Support period for the applicable release.</td>
<td>Extended Support, when available, is generally sold in six- (6) month increments and consists of a reduced level of support. Specific terms and conditions for Extended Support will vary by product.</td>
</tr>
<tr>
<td>For some EMC hardware products, it is EMC’s intention, subject to change at EMC’s discretion, to make available EMC’s standard support for the period of five (5) years after the applicable End-of-Life (EOL) date of the hardware. The EOL date refers to the date that EMC has discontinued a model number of EMC hardware or software as a product offering, and has removed such model number from EMC’s pricing/quoting systems.</td>
<td>Extended Support requires a current EMC maintenance contract to be in place for the associated product.</td>
</tr>
<tr>
<td>For some platform software products, it is EMC’s intention to support the current and immediately prior software release for a period that is coterminous with the related hardware.</td>
<td></td>
</tr>
</tbody>
</table>

**EMC End-of-Service Life Notification.** If Extended Support is not available or purchased, End-of-Service Life (EOSL) of a product occurs on the End-of-Primary-Support date. EMC endeavors to give customers notice of a product’s End of Service Life to enable them to plan for the retirement of their EMC products. This provides customers with the opportunity to smoothly transition to a more advanced and/or currently supported EMC product. Additional information on EOSL and EOSL dates for EMC products can be found by searching for the specific EMC product within the [Support by Product](https://www.emc.com/support) section of the EMC Online Support site.

**Equipment Warranty.** Most EMC equipment (hardware) is sold with warranties for periods of one to three years depending on the product. Certain EMC equipment products are sold with limited warranties.

**Software Warranty.** The software warranty covers the media only for ninety (90) days from the date of shipment, or the date of electronic availability, as applicable. The warranty duration for Core Software (the programming or microcode firmware sometimes included by EMC with equipment, at no extra charge, to enable the equipment to perform is basic functions) is the same as the warranty duration of the equipment with which the Core Software is included. Certain EMC software products are sold with limited warranties.

**Support Levels.** EMC offers three support levels: Basic, Enhanced, and Premium. The descriptions of the Basic, Enhanced, and Premium support options that are incorporated in the GSA schedule along with the support levels for each product, warranty durations, response times, extent of coverage, response times, severity levels and other information can be found in the EMC Product Warranty and Maintenance Table. Not all support levels are available for every product.

**Warranty Upgrade.** With the original purchase of EMC products, customers have the option to increase the support level for some (not all) products by purchasing a Warranty Upgrade. For example, there are options to increase warranty coverage from Basic to Enhanced; Basic to Premium; or Enhanced to Premium. Warranty Upgrades provide the right to receive an upgraded level of support for the entire warranty period, are invoiced in advance, and prepaid. Warranty Upgrades cannot be prorated.

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6 This is a general description of EMC warranty and maintenance offerings only. This general description does not modify EMC Warranty or Maintenance terms that are incorporated in the GSA schedule. Please consult the [EMC Product Warranty and Maintenance Table](https://www.emc.com/support) for details.

7 Certain terms, limitations and exclusions apply to EMC’s support lifecycle policy. In some cases, resolution of an issue may be addressed by requiring a move to a more recent release.

8 For GSA orders Extended Support is available on an Open Market Basis Only. If Extended Support is not available or purchased, End-of-Service Life (EOSL) of a product occurs on the End-of-Primary-Support date.

**Equipment Maintenance.** If purchased, equipment maintenance begins upon expiration of the equipment warranty period. For products with limited warranty, maintenance begins at the same time as the warranty begins. Equipment maintenance can be purchased at the time of original product purchase. **Software Maintenance.** Software maintenance is sold as a product and provides the right to new software releases as made generally available by EMC for the period of software maintenance coverage purchased. Software Maintenance is invoiced at the time of purchase and prepaid. **Maintenance Renewals.** For products that have not reached EOSL, EMC may provide customers with the option to renew maintenance, both equipment and software, at the same support level (Basic, Enhanced, or Premium) originally purchased. Once a product reaches EOSL, support will no longer be available and maintenance may not be renewed.

**Equipment Maintenance Renewals.** When the original warranty or original equipment maintenance period ends, EMC may provide GSA customers with the option to purchase continued equipment support through the maintenance renewal process, until the EOSL date. **Software Maintenance Renewals.** When the initial period of prepaid software maintenance ends, software maintenance may be renewed on a prepaid basis only, until the EOSL date. **Equipment Upgrades.** Warranty and maintenance for equipment upgrades will be priced at the same support level (Basic, Enhanced, or Premium) that applies to the system in which the upgrade equipment is installed. The applicable warranty or maintenance period will be co-terminus with the warranty or maintenance period that applies to the system in which the upgrade equipment is installed. Annual maintenance prices are prorated on a monthly basis to conform to the co-terminus end date.

**Warranty Prices.** Except for Warranty Upgrades, warranty is not currently separately priced and applicable warranty support is currently included in the purchase price of the products.

**Maintenance, Warranty Upgrade, and Maintenance Renewal Pricing.**

The maintenance list price for EMC equipment and software maintenance, warranty upgrades, and equipment and software maintenance renewals is priced as a percentage of (not discount off) the product commercial list price. As set forth in the tables below, the percentages vary by Component Type within each major Product and Product Family. A limited number of components are priced on a fixed dollar basis as indicated in Table 2, Table 3, and Table 4 attached.

The maintenance list price rates in Table 2, Table 3, and Table 4 are for 12 months of support. The total maintenance list price for system configuration is determined as follows:

1. The commercial list price of each component product is multiplied by the quantity of the product (extended component list price).
2. The extended component list price is multiplied by the applicable list price rate (percentage) from the rate tables attached for the desired level of support (maintenance list price).
3. The maintenance list price is multiplied by the number of years of support required.
4. The individual component maintenance list prices are summed using an aggregating model number.
5. The GSA net price for maintenance is calculated by applying the GSA discount (discount off maintenance list) to the total maintenance list price. The GSA discounts are set forth in Table 1 below.

For Enterprise Content Division (ECD) Products (Documentum and Captiva):

Annual Maintenance List Pricing can be considered to be 19% of product list price for Basic Support (available only for Pixtools), 23% of product list for Enhanced Support and 27% of product list for Premium Support. Initial year Maintenance Pricing incorporates the product discount by applying the percentages (19% for Basic Support, 23% for Enhanced support, and 27% for premium support) to the net price.

The maintenance renewal price for system configurations for the EMC ECD Products (Documentum and Captiva) products is determined as follows:

1. The previous year’s maintenance is increased by 3%.
2. The individual component maintenance list prices are summed using an aggregating model number.

When circumstances require, annual prices can be pro-rated to the actual term of support.

The sum of component level maintenance pricing will appear on the quote under one of several aggregating model numbers that include (but are not limited to) the following examples:

<table>
<thead>
<tr>
<th>Aggregating Model Number</th>
<th>General Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-ENHHW-001</td>
<td>Sum of Enhanced Hardware Support</td>
</tr>
<tr>
<td>M-PREHW-001</td>
<td>Sum of Premium Hardware Support</td>
</tr>
<tr>
<td>WU-PREHW-001</td>
<td>Sum of Premium Hardware Warranty Upgrade</td>
</tr>
<tr>
<td>M-PRESW-001</td>
<td>Sum of Premium Software Support</td>
</tr>
<tr>
<td>M-ENHSW-001</td>
<td>Sum of Enhanced Software Support</td>
</tr>
</tbody>
</table>

Because these model numbers only serve to sum up and aggregate component maintenance list prices on a quote, these model numbers do not represent any intrinsic, discreet service or have a unique list price. Aggregating model numbers do not appear on the GSA schedule price list. These models are not open market items because they only serve to sum individual maintenance prices for products that are included on the GSA schedule. Other maintenance aggregating model numbers are used in the quoting system. EMC reserves the right to change maintenance aggregating model numbers without notice.

**Prepaid Maintenance Pricing.** Also referred to as point-of-sale maintenance, this maintenance is purchased in the initial order and is calculated within the EMC quoting systems. The EMC reseller can provide an EMC “Product Warranty and Maintenance Schedule” for each quote to validate the maintenance calculations substantially in the form of the following illustration. This illustration does not represent actual list prices or discounts.
Maintenance Renewal Pricing. Maintenance renewal pricing is offered for previously purchased systems and products installed in specific customer locations. Renewal quotes are based on information from EMC installed base systems, as well as customer provided information. Because maintenance renewal quotes are highly individualized for particular installations of EMC products, renewal quotes are supported by detailed spreadsheets provided with the renewal quote. The “Product Warranty and Maintenance Schedule” is not available for maintenance renewal quotes, and aggregating model numbers are not used in quoting.

End-of-Life (EOL) Date. The EOL date refers to the date that EMC has discontinued a model number of EMC hardware or software as a product offering, and has removed such model number from EMC’s pricing/ quoting systems. Products that have reached their EOL date are no longer available for purchase, but are eligible for maintenance renewal until the End-of-Primary Support date (see table above). To distinguish products that are eligible for maintenance renewal only the following note is attached to the product description: “MAINTENANCE AVAILABLE ONLY. PRODUCT NOT AVAILABLE FOR SALE.”

Extended Support. EMC may, at its discretion, offer Extended Support for certain products (see table above), at different terms and pricing than standard support. Extended support is not included in the GSA Schedule and is offered on an Open Market Basis only.

End-of-Service Life (EOSL) Date. Products that have reached their EOSL date are permanently removed from the GSA Schedule price list.

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
<th>Qty</th>
<th>Pre-Sold Maint Months</th>
<th>Total Coverage Months</th>
<th>Maintenance Model</th>
<th>Maint List Price(USD)</th>
<th>Total Maint Price(USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-ENHSW-001</td>
<td>ENHANCED SOFTWARE SUPPORT</td>
<td>1</td>
<td></td>
<td>36</td>
<td>36</td>
<td>M-ENHSW-001</td>
<td>5,900.00</td>
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<tr>
<td>ABC</td>
<td>Software Title 1</td>
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<td>36</td>
<td>36</td>
<td>M-ENHSW-001</td>
<td>3,000.00</td>
<td>2,700.00</td>
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<td>DEF</td>
<td>Software Title 2</td>
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<td>36</td>
<td>36</td>
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<td>1,700.00</td>
<td>1,530.00</td>
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<tr>
<td>GHI</td>
<td>Software Title 3</td>
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<td>36</td>
<td>36</td>
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<td>1,200.00</td>
<td>1,080.00</td>
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<tr>
<td>Maintenance Discount Class</td>
<td>Discount Class Description</td>
<td>SIN</td>
<td>Prepaid Maintenance Included in Original Order</td>
<td>Maintenance Renewals</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------------------------------------------------------</td>
<td>---------</td>
<td>-----------------------------------------------</td>
<td>----------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Hardware - Enterprise (Symmetrix, Celerra)</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>B</td>
<td>Hardware - Mid-Tier (CLARION, Centera, Atmos, NAS)</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
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<tr>
<td>C</td>
<td>Hardware – Connectrix</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CL-E</td>
<td>Cloud Edition (VMAX CE)</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
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<td>CL-E</td>
<td>Cloud Edition (VMAX CE)</td>
<td>132-33</td>
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<td>5.29%</td>
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<tr>
<td>D1/D2/D3</td>
<td>Software - Enterprise Platform, Mid-Tier Platform, Multi-platform/Open</td>
<td>132-12/132-33</td>
<td>-</td>
<td>5.29%</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>DE</td>
<td>Entry Software (BRS: Data Domain)</td>
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<td>-</td>
<td>8.32%</td>
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<td></td>
</tr>
<tr>
<td>DH</td>
<td>High-End Software (BRS: Data Domain, Avamar, Disk Library, Networker)</td>
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<td>-</td>
<td>8.32%</td>
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<td></td>
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</tr>
<tr>
<td>DM</td>
<td>Midrange Software (BRS: Data Domain, Atmos, Disk Library)</td>
<td>132-33</td>
<td>-</td>
<td>8.32%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>EMC 3rd Party Hardware &amp; Software, Switches</td>
<td>132-12</td>
<td>43.58%</td>
<td>3.28%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>EMC 3rd Party Hardware &amp; Software, Switches</td>
<td>132-33</td>
<td>43.58%</td>
<td>5.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EN-H</td>
<td>Hardware – VMAX 10K/20K/40K</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EN-HM</td>
<td>Hardware Maintenance - VMAX 10K/20K/40K</td>
<td>132-12</td>
<td>-</td>
<td>43.58%</td>
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<td></td>
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<tr>
<td>EN-S</td>
<td>Software – VMAX 10K/20K/40K</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
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<td></td>
</tr>
<tr>
<td>EN-SM</td>
<td>Software Maintenance - VMAX 10K/20K/40K</td>
<td>132-33</td>
<td>-</td>
<td>43.58%</td>
<td></td>
<td></td>
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<tr>
<td>G</td>
<td>Hardware Maintenance</td>
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<td>14.36%</td>
<td>14.36%</td>
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</tr>
<tr>
<td>H</td>
<td>Software Maintenance - Mid-Tier Platform</td>
<td>132-33</td>
<td>43.58%</td>
<td>43.58%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H3</td>
<td>Software Maintenance - Multi-platform</td>
<td>132-33</td>
<td>43.58%</td>
<td>43.58%</td>
<td></td>
<td></td>
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<tr>
<td>J</td>
<td>Server Flash, AX/NX, Insignia (HW &amp; SW)</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J</td>
<td>Server Flash, AX/NX, Insignia (HW &amp; SW)</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>K</td>
<td>Select</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
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</tr>
<tr>
<td>K</td>
<td>Select</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
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<tr>
<td>PE</td>
<td>Systems (DDR arrays and Appliances) and DDOS SW</td>
<td>132-12</td>
<td>31.49%</td>
<td>20.41%</td>
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<td>PH</td>
<td>Systems (DDR arrays and Appliances) and DDOS SW, DL3D 1500/3000/4000</td>
<td>132-12</td>
<td>32.50%</td>
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<td>PM</td>
<td>Systems (DDR arrays and Appliances) and DDOS SW, DLm 1000/2000/6000/8000</td>
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<td>33.51%</td>
<td>20.41%</td>
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<td>UE</td>
<td>Unified Entry Level (VNX)</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
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<tr>
<td>UM</td>
<td>Unified Entry Level (VNX)</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
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<tr>
<td>UM-H</td>
<td>VNX5200/5400/5600/5800/7600/8000/F</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>UM-S</td>
<td>Software Maintenance - Unified Mid-Tier</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>V</td>
<td>ViPR, VDSC, ECS Maintenance – Hardware and Software</td>
<td>132-12/132-33</td>
<td>-</td>
<td>5.29%</td>
<td></td>
<td></td>
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<tr>
<td>VPLEX</td>
<td>VPLEX – Hardware and Software</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
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<tr>
<td>VPLEX</td>
<td>VPLEX – Hardware and Software</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>XT</td>
<td>XtremIO – Hardware and Software</td>
<td>132-12</td>
<td>-</td>
<td>3.28%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>XT</td>
<td>XtremIO – Hardware and Software</td>
<td>132-33</td>
<td>-</td>
<td>5.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

EMC Maintenance List Price Rates are set forth in Table 2, Table 3, and Table 4 that follow.
For ECD Products (Documentum and Captiva):

Annual Maintenance List Pricing can be considered to be 19% of product list price for Basic Support (available only for Pixtools), 23% of product list for Enhanced Support and 27% of product list for Premium Support. Initial year Maintenance Pricing incorporates the product discount by applying the percentages (19% for Basic Support, 23% for Enhanced support, and 27% for premium support) to the net price.

The maintenance renewal price for system configurations for the EMC ECD Products (Documentum and Captiva) products is determined as follows:
1. The previous year’s maintenance is increased by 3%.
2. The individual component maintenance list prices are summed using an aggregating model number.

EMC CORPORATION

ADDITIONAL TERMS/DOCUMENTATION

- SOFTWARE USE RIGHTS
- BASIC/ENHANCED/PREMIUM SUPPORT TERMS
- WARRANTY/LIMITED WARRANTY/MAINTENANCE TERMS

Scroll down to next page.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Expert Choice, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A (the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER OGP 4800.21 (July 2016), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSA and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23,
Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
5. Ownership and Proprietary Rights Notices.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

EXPERT CHOICE, INC.

EXPERT CHOICE, INC., LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions.

1.1 "Active Decision Project" means a Decision Project (a) that is published or otherwise made available to users for the purpose of entering measurable data and/or judgments into such Decision Project; and (b) into which measurable data and/or judgments have been entered. A Decision Project becomes an "Active Decision Project" immediately upon the first time a user enters measurable data and/or a judgment into such Decision Project; provided, however, that a Decision Project will not be considered an "Active Decision Project" during any time period where such Decision Project is inactivated through the archiving feature of the Product.

1.2 "Confidential Information" means all non-public information, whether in oral, written or other tangible or intangible form, that a Party designates as being confidential or which, under the circumstances surrounding disclosure, the receiving Party knows or has reason to know should be treated as confidential, including, without limitation, the Software, and any Ordering Activity data. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by the receiving Party or its employees or any other person who directly or indirectly receives such information from the receiving Party or its employees or (b) in violation of a confidentiality obligation to the disclosing Party known to the receiving Party; (ii) is or becomes available to the receiving Party on a non-confidential basis from a Third Party which is entitled to disclose it to the receiving Party; or (iii) was developed by employees or agents of the receiving Party independently of, and without reference to, any information communicated to the receiving Party by the disclosing Party.

1.3 "Decision Project" means the Web-based decision-making analytic tool generated by Ordering Activity using the Software and/or the Hosted Services that is designed to elicit data and judgments from users with respect to the business objectives and/or alternatives for which the Decision Project is created.

1.4 "Delivery" means the sooner of the date that Expert Choice: (i) delivers the Software on a CD to Ordering Activity; (ii) delivers the Software on a CD to a common carrier for shipment to Ordering Activity; or (iii) makes the Hosted Services available to Ordering Activity for its access and use, as the case may be.

1.5 "Documentation" means the then-current, generally available, written instructions, user guides, and user manuals for the Products, if applicable, whether in electronic, paper or other equivalent form, provided by Expert Choice and in connection with any updates, modifications and improvements to the Software, regardless of form or media.

1.6 "Hosted Services" means the provision of access over the Internet to the functionality of the Software.

1.7 "Intellectual Property Rights" means, collectively, all rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including moral rights and similar rights.

1.8 "Named User" means the employees, agents or authorized representatives of Ordering Activity that may be specifically named in the Order Form who are authorized to use the Products. Named Users may include Ordering Activity contractors performing work on Ordering Activity's behalf.

1.9 "Order Form" means the ordering documents, including a Government Purchase Order, representing the initial purchase of the Products as well as any subsequent purchases agreed to between the Parties submitted by Ordering Activity and agreed to by Expert Choice that specify, among other things, the Products purchased, the license type and license grant, the number of Named Users and the fees.

1.10 "Products" means one or more of the following products purchased by Ordering Activity as set forth in an Order Form: the Hosted Services, the enterprise version of the Software and/or the desktop version of the Software.

1.11 "Software" means the means the machine-readable, object-code version of Expert Choice's proprietary software, including all related Documentation.

1.12 "Third Party" means any department or division of Ordering Activity not specifically identified herein, or any person, entity or Party other than the Parties, regardless of relation or affiliation with either Party.

2. Reserved.

3. Reserved.

4. Audit Rights. The terms of this Section 4 only apply if Ordering Activity has purchased the desktop and/or enterprise version of the Software.

4.1 Audit. During the Term and subject to Government security requirements, Expert Choice may periodically conduct onsite audits of Ordering Activity's usage of the desktop and/or enterprise version of the Software licensed by Ordering Activity under each applicable Order Form. These audits will be conducted during regular business hours, and Ordering Activity agrees to permit Expert Choice and its representatives, subject to Government security requirements, reasonable access to the premises, facilities, data, and networks necessary to conduct such audits. Expert Choice will use reasonable efforts not to interfere unduly with Ordering Activity's regular business activities. At Expert Choice's option, Ordering Activity shall complete a self-audit questionnaire in a form Expert Choice may provide.

4.2 Additional Licenses. Expert Choice will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

5. Ownership and Proprietary Rights Notices.

5.1 Title. Ordering Activity acknowledges and agrees that title to and ownership of the Products, including all corrections, enhancements, or other modifications to the Software, whether made by Expert Choice or any Third Party, and all Intellectual Property Rights therein, are and shall at all times be deemed the sole and exclusive property of Expert Choice.

5.2 Proprietary Rights Notices. Ordering Activity shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by Expert Choice on or in the Products, and shall ensure that all such notices are reproduced on all copies thereof.


6.1 Assumption of Responsibility. Ordering Activity assumes all responsibility for the selection of, use of, and results obtained from the Software. All warranties, express or implied, extend solely to Ordering Activity and not to any Third Parties.

6.2 DISCLAIMER. Expert Choice warrants that the software will, for a period of sixty (60) days from the date of your receipt (“Warranty Period”), perform substantially in accordance with the software documentation accompanying it. If the software fails to perform substantially in accordance with the documentation during the Warranty Period, Expert Choice shall use commercially reasonable efforts to repair or replace the nonconforming software to make it perform in accordance with the documentation. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE PRODUCTS ARE PROVIDED “AS IS,” WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT OR RESULTS, OR SYSTEM INTEGRATION, OR ANY WARRANTIES ARISING UNDER ANY OTHER LEGAL REQUIREMENT. EXPERT CHOICE makes no warranty THAT THE SOFTWARE WILL RUN PROPERLY ON ALL HARDWARE, that the SOFTWARE OR THE HOSTED SERVICES WILL MEET the REQUIREMENTS of the ORDERING ACTIVITY OR USERS, WILL OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY THE ORDERING ACTIVITY OR USERS, OR THAT THE HOSTED SERVICES OR OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

7. Reserved.

8. Reserved.

9. Term and Termination.

9.1 Term. This Agreement shall commence upon the Effective Date and shall continue for the period set forth in the applicable Order Form (“Term”), unless earlier terminated.

9.2 Obligations Upon Termination. Upon the termination or expiration of this Agreement: (i) Ordering Activity shall promptly pay in full all outstanding payments to Expert Choice; (ii) all licenses granted hereunder (if any) will immediately terminate and Ordering Activity shall immediately cease all use of the Products; (iii) Ordering Activity shall remove all copies of the Software from its computer systems and shall return or destroy (at Expert Choice's option) all such copies to Expert Choice; and (iv) the receiving Party shall promptly return all Confidential Information of the disclosing Party in its the possession or control. With respect to (iii) and (iv) of the preceding sentence, Ordering Activity shall certify to Expert Choice in writing within ten (10) days of the date on which termination or expiration is effective that it has made no other copies, or has completely destroyed all copies, including backup or archive copies, of the Software or any portion thereof, and that no copies of any portion of the Software are in existence on any network, system, or equipment ever owned or used by Ordering Activity. The expiration or termination of this Agreement does not relieve either Party of any obligations that have accrued on or before the effective date of the termination or expiration.

10. General.

10.1 Export Restrictions. Ordering Activity acknowledges and agrees that the Software is subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of the Treasury, Office of Foreign Asset Controls. Ordering Activity will comply with these laws and regulations. Ordering Activity shall not without prior U.S. Government authorization, export, re-export, or transfer any goods, software, or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of the Treasury.

SERVICE LEVEL AGREEMENT

Expert Choice bases its service level agreement on ‘issues.’ An ‘issue’ is defined as an unplanned interruption to Expert Choice Comparison® or Expert Choice Riskion® that causes an interruption or disruption in the Ordering Activity’s ability to use either product for its intended purpose. Problems with customer internet service, connections, firewalls, networks, hardware, operating system software, browser software, or other foundational software are not covered under this SLA.
### Issue Triage

<table>
<thead>
<tr>
<th>Priority</th>
<th>Criteria</th>
<th>Initial Response Time /*</th>
<th>Target Resolution Time /*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent</td>
<td>Users are continually unable to use the software and a workaround is not available.</td>
<td>1 hour</td>
<td>4 hours</td>
</tr>
<tr>
<td>High</td>
<td>Some functions of the software are impaired and no workaround is available.</td>
<td>2 hours</td>
<td>8 hours</td>
</tr>
<tr>
<td>Medium</td>
<td>The normal priority where some functions of the software are impaired, with a workaround available.</td>
<td>4 hours</td>
<td>Release Schedule – typically quarterly</td>
</tr>
<tr>
<td>Low</td>
<td>An information request or clarification that has no immediate operational impact.</td>
<td>4 hours</td>
<td>Release Schedule – typically quarterly</td>
</tr>
</tbody>
</table>

* Working hours are Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time. Holidays are excluded from working hours. The clock for Response and Resolution Time does not run during non-working hours.

### Hours of Operation and Contact Methods

Expert Choice’s support is available as follows:

<table>
<thead>
<tr>
<th>Contact Methods</th>
<th>Email</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support</td>
<td><a href="mailto:support@exportchoice.com">support@exportchoice.com</a></td>
<td>(703) 243-5595 ext. 2 Or (321) 229-2959</td>
</tr>
</tbody>
</table>

- **Hours of Support Operation**: Actively Monitored Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time
- **After Hours**: Triaged Next Business Day Triaged by an On-Call Person

1. Expert Choice considers all email-submitted issues as Medium.
2. Expert Choice requires five business day notice to support any issues that may result from client-initiated business practice changes, e.g. using the software in a different way.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Extreme Networks, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1488 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 2.121(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.232-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government, failures of its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
1) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and those of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**EXTREME NETWORKS, INC.**

1. **DEFINITIONS.** “Affiliates” means any person, partnership, corporation, limited liability company, or other form of enterprise that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the party specified. “Server Application” shall refer to the License Key for software installed on one or more of Your servers. “Client Application” shall refer to the application to access the Server Application. “Licensed Materials” shall collectively refer to the licensed software (including the Server Application and Client Application), Firmware, media embodying the software, and the documentation. “Concurrent User” shall refer to any of Your individual employees who You provide access to the...
Server Application at any one time. “Firmware” refers to any software program or code imbedded in chips or other media. “Licensed Software” refers to the Software and Firmware collectively.

2. RESERVED.

3. GRANT OF SOFTWARE LICENSE. Extreme will grant You a non-transferable, non-exclusive license to use the machine-readable form of the Licensed Software and the accompanying documentation if You agree to the terms and conditions of this Agreement. You may install and use the Licensed Software as permitted by the license type purchased as described below in License Types. YOU MAY NOT USE, COPY, OR MODIFY THE LICENSED MATERIALS, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

4. LICENSE TYPES.
   - Single User, Single Computer. Under the terms of the Single User, Single Computer license, the license granted to You by Extreme when You install the License Software authorizes You to use the Licensed Software on any one, single computer only, or any replacement for that computer, for internal use only. A separate license, under a separate Software License Agreement, is required for any other computer on which You or another individual or employee intend to use the Licensed Software. A separate license under a separate Software License Agreement is also required if You wish to use a Client license (as described below).
   - Client. Under the terms of the Client license, the license granted to You by Extreme will authorize You to install the License Key for the Licensed Software on your server and allow the specific number of Concurrent Users shown on the relevant invoice issued to You for each Concurrent User that You order from Extreme or Your dealer, if any, to access the Server Application. A separate license is required for each additional Concurrent User.

5. RESERVED. RESTRICTION AGAINST COPYING OR MODIFYING LICENSED MATERIALS. Except as expressly permitted in this Agreement, You may not copy or otherwise reproduce the Licensed Materials. In no event does the limited copying or reproduction permitted under this Agreement include the right to decompile, disassemble, electronically transfer, or reverse engineer the Licensed Software, or to translate the Licensed Software into another computer language. The media embodying the Licensed Software may be copied by You, in whole or in part, into printed or machine readable form, in sufficient numbers only for backup or archival purposes, or to replace a worn or defective copy. However, You agree not to have more than two (2) copies of the Licensed Software in whole or in part, including the original media, in your possession for said purposes without Extreme’s prior written consent, and in no event shall You operate more copies of the Licensed Software than the specific licenses granted to You. You may not copy or reproduce the documentation. You agree to maintain appropriate records of the location of the original media and all copies of the Licensed Software, in whole or in part, made by You. You may modify the machine-readable form of the Licensed Software for (1) your own internal use or (2) to merge the Licensed Software into other program material to form a modular work for your own use, provided that such work remains modular, but on termination of this Agreement, You are required to completely remove the Licensed Software from any such modular work. Any portion of the Licensed Software included in any such modular work shall be used only on a single computer for internal purposes and shall remain subject to all the terms and conditions of this Agreement. You agree to include any copyright or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Software in any form, in whole or in part, or on any modification of the Licensed Software or any such modular work containing the Licensed Software or any part thereof.

6. TITLE AND PROPRIETARY RIGHTS
   (a) The Licensed Materials are copyrighted works and are the sole and exclusive property of Extreme, any company or a division thereof which Extreme controls or is controlled by, or which may result from the merger or consolidation with Extreme (its “Affiliates”), and/or their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials or any portion thereof, to any other party.

7. PROTECTION AND SECURITY.
   You agree not to deliver or otherwise make the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Extreme or its employees, except for purposes specifically related to your use of the Licensed Software on a single computer as expressly provided in this Agreement, without the prior written consent of Extreme. You agree to use your best efforts and take all reasonable steps to safeguard the Licensed Materials to ensure that no unauthorized person shall have access thereto and that no unauthorized copy, publication, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify Extreme of any unauthorized use thereof. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Extreme or its Affiliates and/or its suppliers.

8. MAINTENANCE AND UPDATES. Updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of an Extreme Service and Maintenance Agreement (Exhibit A). Except as specifically set forth in such agreement, Extreme shall not be under any obligation to provide Software Updates, modifications, or enhancements, or Software maintenance and support services to You.

9. RESERVED.

10. EXPORT REQUIREMENTS. You are advised that the Software is of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. You agree not to directly or indirectly export, import or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government); or contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.

11. UNITED STATES GOVERNMENT RESTRICTED RIGHTS. The Licensed Materials (i) were developed solely at private expense; (ii) contain “restricted computer software” submitted with restricted rights in accordance with section 52.227-14 RESTRICTED RIGHTS and its successors, and (iii) in all respects is proprietary data belonging to Extreme and/or its suppliers. For Department of Defense units, the Licensed Materials are considered commercial computer software in accordance with DFARS section 227.7202-3 and its successors, and use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth herein.

12. LIMITED WARRANTY AND LIMITATION OF LIABILITY. The only warranty Extreme makes to You in connection with this license of the Licensed Materials is that if the media on which the Licensed Software is recorded is defective, it will be replaced without charge, if Extreme in good faith
determines that the media and proof of payment of the license fee are returned to Extreme or the dealer from whom it was obtained within ninety (90) days of the date of payment of the license fee.

NEITHER EXTREME NOR ITS AFFILIATES MAKE ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS". THE LIMITED WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, AND STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR FIRM ARE VOID. ONLY TO THE EXTENT SUCH EXCLUSION OF ANY IMPLIED WARRANTY IS NOT PERMITTED BY LAW, THE DURATION OF SUCH IMPLIED WARRANTY IS LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE LICENSED MATERIALS. IN NO EVENT WILL EXTREME OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED MATERIALS BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS. TO ANY PARTY EVEN IF EXTREME OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EXTREME OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary from state to state. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Extreme’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13. RESERVED.

14. Reserved.

EXHIBIT A

ExtremeWorks Support Program

Extreme Networks, Inc. ("Extreme") agrees to provide the ExtremeWorks Support Program and related Support Plans to you pursuant to the following terms and conditions.

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

1.1 "Authorized Users" means those individuals authorized by Ordering Activity to use the Services on behalf of Ordering Activity.

1.2 "Authorized Resellers" means those companies (a) authorized by Extreme to resell, promote or deliver the ExtremeWorks Support Program to the marketplace, and (b) through which Ordering Activity has purchased the ExtremeWorks Support Program.

1.3 "Defect" means a failure of any Product to operate in accordance with Extreme's technical specifications as set forth in the End User Documentation.

1.4 "End User" means a purchaser of the Services who acquires such Services for ordinary business usage and not for purposes of further distribution or resale.

1.5 "End User Documentation" means Product documentation, Product specifications and other related materials.

1.6 "Intellectual Property Rights" means any and all current and future (i) rights associated with works of authorship; including but not limited to copyrights, moral rights, and mask-work rights; (ii) patent rights, rights of priority, and design rights; (iii) trade secret rights, (iv) trademark rights (including service mark rights) and trade dress rights; (v) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered; and (vi) any and all applications and registrations, renewals, extensions, provisional, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

1.7 Reserved.

1.8 "Products" mean Extreme commercial networking products as identified in the Price List, including (i) hardware products with embedded Software, (ii) Software Products in object code form, (iii) End User Documentation, and (iv) other materials related to the foregoing, if any, supplied to you in a commercial package.

1.9 "Releases" mean Updates and Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.

1.10 "Services" mean the services provided by Extreme under the ExtremeWorks Support Program, Premier Services Program (PSP) Foundation Services or any other end user services provided by Extreme under this Agreement in accordance with the applicable program guide.

1.11 "Software" or "Software Products" mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products.

1.12 "Trademarks" mean "Extreme Networks" and the applicable Product trademarks as listed in Extreme's usage guidelines, subject to revision from time to time in Extreme's sole discretion.

1.13 "Update" means a new version of a Software Product that includes defect corrections, bug fixes and/or minor enhancements that operate within the framework of the specifications for the current Upgrade of the Software Product, but does not include substantive features or functions not performed by the prior Release of the Software Product.
1.14 “Upgrade” means a new version of a Software Product that includes substantive features or functions not performed by the prior Release of the Software Product.

2. Services. The scope of the Services provided to Ordering Activity hereunder is based on the support plan purchased by Ordering Activity for each unit of the Product purchased. Certain on-site Services may not be available in some geographic regions or may require a “phase-in” period before they can be made available to Ordering Activity. Extreme shall not be obligated to use subcontractors to perform any Services unless they have been approved by Extreme, and then only one (1) copy of a Release for each Product under an active contract for Services, and Ordering Activity is prohibited from installing Releases on any Product which is not covered under an active contract for Services.

2.2 Corrections. Extreme shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in any Product for which Services have been purchased with a level of effort commensurate with the severity level, provided that Extreme shall have no obligation to correct all Defects in the Products. Ordering Activity shall notify Extreme of the nature and severity of such Defect and the specific serial number of the applicable Product, and provide Extreme with enough information to locate and reproduce the Defect. Extreme shall not be responsible for correcting any Defect not attributable to Products or any Defect listed under Section 3 (“Exclusions”).

3. Exclusions. The Services provided by Extreme hereunder will not include support and maintenance of any third party software or hardware not provided by Extreme. Extreme is not required to provide any services for problems arising out of: (i) Ordering Activity’s failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner in which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme; or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas, GBICs and miniGBICs. Extreme shall only be obligated to support the then-current revision of the Products and the immediately prior revision.

4. Ordering Activity Obligations.

4.1 Ordering Activity Assistance. Ordering Activity agrees to provide Extreme with reasonable access to the Products for which problems are reported and all back-ups and Ordering Activity information services, technical personnel, facilities, and premises as required in connection with the performance of the Services as long as Extreme complies with all of Ordering Activity’s security requirements. To efficiently resolve problems and perform local hardware diagnostics, Ordering Activity shall provide modem level access for all Ordering Activity sites. Ordering Activity may provide passwords and/or activate the modem when needed. Ordering Activity shall be responsible for any and all cables, hardware or software not provided by Extreme. Ordering Activity’s failure to provide such access or information may delay the Services and/or result in Extreme's inability to perform the Services; in such cases, Extreme shall not be liable for any consequences relating to or resulting from such delay or failure to perform.

4.2 Contact People. Ordering Activity shall appoint at least two (2) individuals who have been trained and are knowledgeable on Extreme products within Ordering Activity's organization to serve as the primary contacts between Ordering Activity and Extreme and to receive support as provided herein. Ordering Activity shall provide and shall update as appropriate contact information for the primary contacts, including address, phone number and email address. All of Ordering Activity’s support inquiries shall be initiated through these primary contacts.

4.3 Restrictions on Copying and Reverse Engineering. As a material consideration for this Agreement, Ordering Activity expressly agrees not to translate, disassemble, reverse compile or reverse engineer the Products, including the Software Products, in whole or in part, except to the extent such prohibition is restricted by applicable law. Ordering Activity will not copy, modify, create derivative works, rent, lease, loan or use for timesharing or service bureau purposes any Products, including Software Products, in whole or in part without the prior written approval of Extreme, which approval may be withheld in Extreme's sole discretion.

4.4 No Removal of Markings. Ordering Activity agrees to comply with all legends that appear on or in the Products and not to remove or destroy any patent, copyright, logo, trademark, trade name, proprietary marking, or confidentiality legend placed upon or contained within Products, containers or End User Documentation supplied by Extreme.

5. Reserved.


6.1 Product End of Life. In the event Extreme discontinues or otherwise ceases to make available to its customers a particular Product model number, Extreme will continue to offer Services for such Product in accordance with its then-current End of Life Policy available at www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf. The Services shall remain in effect with respect to other Products, if any, then covered.

6.2 Support Plan End Of Life. Extreme reserves the right to discontinue any Support Plan in its sole discretion upon sixty (60) days’ notice, by email, notification on Extreme’s website, or any other method permitted under this Agreement, to Ordering Activity; however, Extreme will continue to provide services under such discontinued Support Plan through the end of any prepaid support period.

7. RESERVED. 8. Return Process. If Ordering Activity is returning a Product to Extreme, Ordering Activity must first obtain a Return Material Authorization (“RMA”) number from Extreme. Ordering Activity must return the entire contents of the defective Product and dated End User proof of purchase for the defective Product, if requested by Extreme, marked with the RMA number, to a receiving point designated by Extreme. Shipping carts that are not marked with RMA numbers will be rejected by Extreme and returned to Ordering Activity. Extreme will pay the transportation charges (excluding taxes, duties and customs) in accordance with the Support Plan purchased for such Product. Notwithstanding the foregoing, Ordering Activity
retains sole responsibility for risk of loss or damage to Products during shipment to and from Extreme. Products returned to Extreme may be repaired or replaced by Extreme at Extreme’s sole discretion. Replacement Products may be new or refurbished Products.


9.1 Intellectual Property Rights. Ordering Activity acknowledges that the Products are proprietary to Extreme and its suppliers, and that Extreme and its suppliers retain exclusive ownership of all Intellectual Property Rights in and to the Products, including in and to any Software Products and Trademarks. Ordering Activity will take all reasonable measures to protect Extreme’s Intellectual Property Rights in any Product. Except as expressly provided herein, Ordering Activity is not granted any right to any Intellectual Property Rights with respect to any Product.

9.2 License. All Releases provided under the Services are licensed subject to the terms and conditions of the then-current Software license agreement for such Software Product in effect at the time the Release is provided.

10. Warranty. All Updates provided hereunder are warranted for the remaining warranty period of the original Software Product, if any, as specified in the warranty card which shipped with the original Software Product. All Upgrades are warranted as set forth in the warranty card for such Upgrade. Replacement Products provided under the Services are warranted for the remaining warranty period of the original Product, if any, as specified in the warranty card which shipped with the original Product. Nothing in the Services shall be construed as expanding or adding to the warranty set forth on the warranty card. Extreme will use all reasonable commercial efforts to provide the support requested by Ordering Activity under this Agreement in a professional and workmanlike manner. In the event that Extreme fails to meet this warranty, Extreme may reperform the Services, but Extreme cannot guarantee that every question or problem raised by Ordering Activity will be resolved.

EXTREME WARRANTS THE SERVICES ONLY TO ORDERING ACTIVITY AS THE END USER PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND. EXTREME EXPRESSLY DISCLAIMS ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS, IMPLIED (in fact or by operation of law), STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, TERM OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY, TERM OR CONDITION THAT MAY ARISE BY REASON OF USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR COURSE OF PERFORMANCE.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Forcepoint LLC. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted to the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3501 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
   
a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
   
b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
   
c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
   
d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
   
e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
   
f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
   
g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
   
h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government, beyond its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
   
i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
   
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
   
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the government give sole control over the litigation and/or settlement to the contractor are hereby superseded. Nothing contained in the manufacturer’s specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S.; pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All and terms and conditions affecting the GSA must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA customer purchase orders, and the contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The ordering activity expressly acknowledges that EC America as contractor, on behalf of the manufacturer, shall have standing to bring such claim under the Contracts Dispute Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the ordering activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. government, neither this Rider, the manufacturer’s specific terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the manufacturer’s specific terms or the Schedule Contract to the contrary, the GSA customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the manufacturer’s specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA customer purchase order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA customer purchase order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**FORCEPOINT, LLC.**

**FORCEPOINT, LLC. LICENSE, WARRANTY AND SUPPORT TERMS**

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN (“AGREEMENT”) BETWEEN LICENSEE AND FORCERIGHT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE

ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.
   “Databases” means proprietary database(s) of URL addresses, email addresses, Malware, applications and other valuable information.
   “Database Updates” means changes to the content of the Databases.
   “Device” or “Seat” means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee’s email system or network. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).
   “Documentation” means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.
   “Error” means the failure of a Product to perform a specified function or to meet its System Performance Goals, which is reported by Licensee and replicable by Forcepoint.
   “Forcepoint” means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.
   “GSA Customer Purchase Order” (“Order”) means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.
   “License” means the limited, personal, non-sublicensable, non-exclusive, non-transferable right to use the Software (including the Database, if any) for the term set forth in the Order, and in accordance with this Agreement and the Order.
   “License Fees” means the agreed upon license fees for the Software (including the Database, if any) included in an Order based on the GSA Schedule Price List.
   “Licensee” means the ordering activity authorized to place an Order against the GSA Schedule Contract GS-35F-0511T on which the Products are included.
   “Maintenance” means a limited-term, non-exclusive, non-sublicensable, non-transferable right to: (a) receive the technical support described in Section 5, (b) receive Software Upgrades, if any, (c) receive and use the Database Updates, if any, and (d) use SaaS Email and SaaS Web (when set forth in the Order), in accordance with this Agreement and the Order.
   “Maintenance Term” means the agreed upon time period for the provision of Maintenance in an Order. “Permitted Capacity” means the number of Devices, Seats, Users, or other license metrics as set forth in the Order.
   “Products” means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS and Forcepoint packaged service offerings.
   “SaaS” “Software as a Service” means Forcepoint’s software-as-a-service offerings, including SaaS Web and/or SaaS Email.
   “Software” means Forcepoint’s proprietary software applications, in object code only.
   “Software Upgrades” means certain modifications or revisions to the Software, but excludes new products for which Forcepoint generally charges a separate fee.
   “User” means (i) any person utilizing Licensee’s network with access to the Products directly or indirectly, who is an employee, temporary employee, agent, consultant and/or independent contractor (collectively referred to as “personnel,” hereinafter), or guest of Licensee (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee’s email system or network. For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User).
   “Virus” or “Malware” means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

“Average Emails Per Seat” or “Average Emails Per User” means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

“Bulk Mail” means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

“SaaS Email” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

“Open Relay” means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server’s email network.

“Spam” means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

“Average Bandwidth Per Seat” or “Average Bandwidth Per User” means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

“Web Content” means any data and requests for data processed by SaaS Web including, but not restricted to that accessed using the Internet protocols HTTP and FTP.

“SaaS Web” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. Software License. Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance, identified in the Order solely for Licensee’s internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its location. Licensee shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee’s use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has
committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. **Provision of SaaS.**

3.1 Forcepoint will use commercially reasonable efforts to provide SaaS for the Maintenance Term. The then-current Service levels for SaaS are attached as Exhibit B for information purposes. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail.

3.2 If Forcepoint determines that the security or proper function of SaaS would be compromised due to third-party, hacking, denial of service attacks or other activities originating from or directed at Licensee’s network, Forcepoint may immediately suspend SaaS until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.

3.3 If SaaS is suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS enrollment. It is Licensee’s responsibility to make the server configuration changes necessary to reroute email for SaaS Email and reroute Web Content for SaaS Web.

3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.

3.5 Licensee must not use SaaS Email as an Open Relay.

3.6 Licensee must not use the Products to distribute Spam or Malware.

3.7 If in any one (1) calendar month the Average Emails per Device, Seat or Average Emails Per User is greater than ten thousand (10,000), Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which SaaS Email scans inbound or outbound emails. Licensee’s Average Emails Per Seat or Average Emails Per User must not be greater than thirty thousand (30,000) in any one (1) calendar month.

3.8 Licensee’s Average Bandwidth Per Seat or Average Bandwidth Per User must not be greater than 0.02Mbps in any one (1) calendar month.

4. **Licensee Obligations.**

4.1 Licensee will (a) comply with all applicable federal laws, statutes and regulations, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its personnel, and (c) not use the Products to transmit Spam, Malware, or excessive email as defined in section 3.7.

4.2 Licensee must (a) have the authority, rights, or permissions to use all domains registered to the Products, and (b) obtain any legally required consents from its personnel, and (c) not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Websense’s express prior written approval.

4.3 Forcepoint will not be liable for any claims, demands, suits, or proceedings ("Claims") made or brought against Forcepoint by a third party alleging or related to Licensee’s (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) civil or criminal offenses; (iv) transmission or posting of obscene, indecent, or pornographic materials; (v) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vi) transmission of information through the Products.

5. **Technical Support.**

5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Software operates in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under Forcepoint’s Technical Support Policies which are provided for informational purposes as Exhibit A and can be found https://www.forcepoint.com/technical-support-terms-service-and-description. Standard technical support includes online website and portal access, and telephone support during business hours. Database Updates and Software Upgrades will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Permissible Capacity. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available pursuant to the execution of a new or modified Order and are also subject to the terms of this Agreement.

5.2 Forcepoint’s obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee’s use of the Product in accordance with the Documentation and without errors and faults caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days prior written notice should Licensee not stay current with a supported release in accordance with this Section.

6. **Intellectual Property Rights.** The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Licensee agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement Licensee may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Licensee in this Agreement are reserved to Forcepoint. No ownership of the Products passes to Licensee. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

7. **Protection and Restrictions.**

7.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee
information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed "Confidential" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party's personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

7.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for its internal business purposes. Licensee will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use third party software included in the Products independently from the Products; and (x) sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, re-engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use third party software included in the Products independently from the Products; and (x) sublicense, in whole or in part, the Products.

9.3 Licensee's requirements, (iii) operate without interruption or error, (iv) always locate or block transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate. 9.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint shall, within thirty (30) days of its receipt of Licensee's written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if the Error cannot be corrected by Forcepoint, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty related to the Products. 9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products; (ii) use of the Products inconsistent with the accompanying Documentation; (iii) Licensee's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

4.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND NO FORECAST, EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSEES OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES.
11. **Indemnification.** In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint will defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. SUBJECT TO FAR 52.212-4 (h), THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

12. **Term and Termination.**

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Maintenance Term, Licensee’s right to receive Maintenance to the Products ends.

12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Licensee’s decision to purchase a license to the products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Licensee must execute an Order for a new License. Licensee’s continued use of the Products after executing a new order is subject to this Agreement. For purposes of clarification, Licensee is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

12.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, Definitions, 6, Intellectual Property Rights, 7, Protection and Restrictions, 8, Financial Terms, 9, Limited Warranty: Remedies; Disclaimer, 10, Limitation of Liability, 11, Indemnification, 12, Term and Termination, 14, Government Restricted Rights, 15, Export, 16, Compliance and 17, General survive the termination of this Agreement.

13. **Compliance with Laws.** Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Licensee must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

14. **Rights of Government Licensees.** The Products meet the definition of “commercial item” in Federal Acquisition Regulation (“FAR”) 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is “commercial computer software” and applicable Documentation and media are “commercial computer software documentation,” as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint’s proprietary rights therein, and of the exclusive applicability of this Agreement.

15. **Export.** The Products are subject to export controls of the United States (“Export Controls”). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries (“Prohibited Country” or “Prohibited Countries”). It also prohibits export or re-export of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the “Lists”). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or ballistic missiles (“Prohibited Uses”). Licensee represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

16. **Compliance.** Subject to Government security requirements, Forcepoint has the right to monitor the Licensee’s systems to confirm its authorized use of the Products. Upon Forcepoint’s request Licensee will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager’s operation.

17. **General.** For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email Licensee may choose to “opt-out” of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Licensee acknowledges and agrees that by sending such email and “opting out” it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers, subject to the restrictions contained in GSA 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Licensee’s and its personnel’s use of the Products for its own purposes outside of the Agreement. Licensee may not transfer any of Licensee’s rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written

GS-3SF-0511T  https://www.immixgroup.com/contract-vehicles/gsa/it-70-0511T/  Page 477
approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013).

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party’s reasonable control, including acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F-0296R, the Schedule Price List and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer’s Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.
EXHIBIT A

FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Licensees’ use of Forcepoint Products. Licensees are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support, Premium Support, and Mission Critical Support offerings are additional charge support options, and are only provided after Licensee has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Through the combination of available resources, Licensee can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Licensees receive access to:
   - 24x7x365 online support located at: Support
   - the Knowledgebase and Documentation
   - the Customer Forum
   - Tech Alerts Maintenance
   - download software updates and patches
   - submit and track support cases
   - Five (5) incidents per Maintenance year for telephone and online access to technical support engineers during normal business hours for the region where Licensee is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:

   - Address Licensee open cases in a timely, professional and courteous manner
   - Assign a trouble case number used to track status and as a reference for Licensee inquiries
   - Communicate the status of open cases
   - Log the support activity and provide status updates

2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:

   - 24/7 support for Severity Level 1 & 2 issues
   - No limit on the number of incidents per Maintenance year for telephone and online access to technical support engineers
   - Priority access to technical support engineers
   - Priority support
   - Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on Support at: Global Technical Support Programs

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:

   - An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Licensee’s technical issues
   - Premium Priority access to technical support engineers
   - Premium Priority support

4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Licensee to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Licensee’s environment, the TAM will work with Licensee to:

   - Provide strategic support planning around Licensee’s use of the Forcepoint Products
   - Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Licensee receives access to:

   - Technical Account Manager:
     - Expedited case handling and escalation path
     - Account related inquiries and assistance
     - Available for an annual on-site visit
     - Collaborative strategic support planning

These benefits are described in more detail at: Global Technical Support Programs

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Licensee in each of the three Forcepoint business regions.

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9 An “incident” is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year maintenance holders may aggregate and use the allotted incidents at any time during the then-current Maintenance Term. Incidents do not rollover to a renewal Maintenance Term. Assisted support for SaaS support will not count as an incident.
The TAMs proactively work with the Licensee to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Licensee will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions and activities of the regional TAMs for the Licensee on a global level. Upon gaining an understanding of Licensee’s environment, the GAM and regional TAMs will work with Licensee to:

- Provide strategic support planning around Licensee’s use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Licensee receives access to:

- Technical Account Manager:
  - Expedited case handling and escalation path
  - Account related inquiries and assistance
  - Collaborative strategic support planning

These benefits are described in more detail at: Global Technical Support Programs

6. **Forcepoint Mission Critical Support Elite**:

Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support’s Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Licensee for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: Global Technical Support Programs

7. **Forcepoint Hardware Support**:

Hardware support for Forcepoint appliances is available to licensees with current Maintenance for Forcepoint software applications running on the hardware. Support for hardware is available only during the Maintenance Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- “Retain your hard drive” option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Licensee’s business location on record (see Section 10, Licensee Responsibilities)

These benefits are described in more detail at: www.websense.com

For non-Forcepoint branded hardware, Licensee must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times**:

Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Licensee by a member of the Forcepoint Technical Support team or by the Licensee online at Support.

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Severity One (highest severity)</strong> Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business</td>
<td>Up to 1 Business Hour</td>
<td>Up to 45 Minutes</td>
<td>Up to 30 Minutes</td>
<td>Up to 30 Minutes</td>
<td>Up to 30 Minutes</td>
</tr>
<tr>
<td><strong>Severity Two</strong> Business is disrupted but functioning. - a Forcepoint product's functionality is severely impacted - Mission critical applications or the majority of users are impacted.</td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Hours</td>
<td>Up to 3 Hours</td>
<td>Up to 2 Hours</td>
<td>Up to 2 Hours</td>
</tr>
<tr>
<td><strong>Severity Three</strong> Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected</td>
<td>Up to 8 Business Hours</td>
<td>Up to 8 Business Hours</td>
<td>Up to 6 Business Hours</td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Business Hours</td>
</tr>
<tr>
<td><strong>Severity Four (lowest severity)</strong> A request for information. - Request for product information or questions regarding how to use the product Minimal impact to customer business a request for product modification</td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
<td>Up to 1 Business Day</td>
<td>Up to 1 Business Day</td>
</tr>
</tbody>
</table>
# Hardware On-Site Parts Replacement Response Times:

<table>
<thead>
<tr>
<th>Hardware Appliance</th>
<th>Initial Response</th>
<th>Premium &amp; Premium Priority Support</th>
<th>Mission Critical Support (including Global &amp; Elite)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>V10000</td>
<td>Not Available</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;10&lt;/sup&gt;</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt;</td>
</tr>
<tr>
<td>M5000</td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
</tr>
<tr>
<td>M7500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M10000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>V5000</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
</tr>
<tr>
<td>X10G</td>
<td>Not Available</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2&lt;/sup&gt; (additional purchase required)</td>
</tr>
</tbody>
</table>

<sup>10</sup> Subject to service availability within the service location. For additional information on service availability and locations visit: [Support]<sup>3</sup>  
Standard Support for V5000 is available only with maintenance purchased to Forcepoint Web Security.
For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
<th>Resolution Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>One - Service unavailable or, if applicable, Virus infection occurring</td>
<td>Up to 1 Business Hour</td>
<td>Up to 45 Minutes</td>
</tr>
<tr>
<td>Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed</td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Hours</td>
</tr>
<tr>
<td>Three - Service is available, but technical questions or configuration issues</td>
<td>Up to 8 Business Hours</td>
<td>Up to 8 Business Hours</td>
</tr>
<tr>
<td>Four – Information Issues, reporting questions, password resets</td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
</tr>
</tbody>
</table>

9. **Service Level Guidelines: Response Time and Request Resolution**:

- **Service Level Compliance**: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:
  - Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day.
  - o Business hours are Monday through Friday, during the hours set forth in the region where Licensee resides as set forth at: [Contact Support (“Business Hours”)](https://www.immixgroup.com/contact-support/)
  - o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Licensees.

- **Escalation response levels**: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Licensee on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

- **Support for hardware**: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: [Target Response Times](https://www.immixgroup.com/contact-support/)

10. **Licensee Responsibilities**: In order to efficiently resolve problems, it is important that there be clear and effective communications between Licensee and Forcepoint. The first step of the process requires an accurate reporting of the problem by Licensee. Licensee will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Licensee name

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11 Service levels are applicable for the software configurations described at [Certified Product Matrix](https://www.immixgroup.com/certified-product-matrix). Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.
• Maintenance Key information
• Support PIN of the day for Licensee’s Cloud security account
• Technical contact information including: name, telephone number and email address
• Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
• Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Licensee should retain and use this case number in order to facilitate future communications regarding the matter.

In order to receive on-site parts replacement for a hardware Severity One problem, Licensee must keep a current record with Forcepoint of the business location on record for the physical location of the hardware. Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

• Licensee must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration
• Updates to a physical location must be completed prior to dispatching of authorized technicians
• Licensee or Licensee’s authorized representative must be available when the service technical arrives, or the service technician will not be able to service the hardware
• Missed service calls due to Licensee’s unavailability may result in additional charges for the follow-up service call

be provided where:

• Hardware is repurposed or modified from its original configuration
• Hardware has missing or altered serial numbers or Service Tags
• Hardware has been serviced by someone other than a Forcepoint-authorized service provider
• Premium or Mission Critical Support maintenance has expired

11. Technical Support Channels: There are two ways for Licensees to engage support:

• Open a case online at: Support
• Open a case via telephone: Contact Support

12. Support Escalation Channels: If after following the procedures for creation of a technical support case Licensee desires to escalate a support issue, the following escalation path to a Technical Support Manager in Licensee’s region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

<table>
<thead>
<tr>
<th>Duty Manager Hotline</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty Manager Hotline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical Support Americas</td>
<td>1-858-458-2940</td>
<td></td>
</tr>
<tr>
<td>Technical Support EMEA</td>
<td>+44-203 02 444 01</td>
<td></td>
</tr>
<tr>
<td>Technical Support APAC</td>
<td>Australia/New Zealand: +61 2 9414 0033</td>
<td>India: +1-858-332-0061</td>
</tr>
<tr>
<td></td>
<td></td>
<td>China, Japan, SE Asia: +86 (10) 5884-4200</td>
</tr>
</tbody>
</table>

Escalation contacts are available 24 hours a day, 7 days a week to service Licensee’s Severity 1 business needs.

12 A service technician will only be dispatched after Forcepoint and Licensee have concluded phone-based troubleshooting and determined that a Severity One problem exists.
13 Registrations may take up to 10 business days to complete.
14 In the event that Licensee is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. Toll-free numbers are provided for Licensees of Premium and Mission Critical Support in some geographies.
Security Service Level Agreement

1. Terms and Conditions

Forcepoint™ is a premier provider of SaaS security services. Forcepoint provides these SLAs in order to demonstrate its ongoing commitment to provide top-quality SaaS security service offerings for world class organizations and businesses.

1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at Subscription Agreement. The defined terms therein shall have the same meaning when used in this SLA. The current version of these SLAs can be found at Forcepoint SaaS Security Service Level Agreement.

1.2 In order to receive a Service Credit under any of these SLAs, the Subscriber must make a credit request in writing within thirty (30) days of the occurrence of the breach in service levels (or earlier if specifically set forth below). The Subscriber must also promptly provide Forcepoint with evidence as reasonably requested by Forcepoint of the SLA violation subject to the Service Credit request. A “Service Credit” entitles the Subscriber to the free use of the affected SaaS security service for the time period set forth in the applicable SLA.

1.3 Credits for any Subscriber problems with Forcepoint SaaS Security services will be provided under a single SLA for a single claim, with the SLA that the claim is based upon determined by the Subscriber. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

- The SaaS Security service is unavailable for an hour or less, and the Subscriber fails to report the unavailability in writing to Forcepoint within five (5) days thereafter.
- The SaaS Security service is incorrectly configured by the Subscriber.
- The Subscriber provides incorrect configuration information to Forcepoint.
- Forcepoint is performing scheduled or routine maintenance of the SaaS Service, where the Subscriber has been notified of the maintenance no less than five (5) days in advance.
- The Subscriber’s applications or equipment or Internet connection has failed.
- For SaaS Email Security, where an account is not configured to use two or more co-location sites (clusters).
- The Subscriber has acted as an open relay or open proxy, or has been using the service to send spam or viruses, or otherwise is using the SaaS Security service in violation of the Forcepoint Subscription Agreement.
- The Subscriber has used the SaaS Security service for thirty (30) days or less.
- The Subscriber is a trial or evaluation customer.
- The failure of the SLA is based on reasons beyond Forcepoint’s reasonable control as set out in the Forcepoint Subscription Agreement.

1.5 The remedies set forth in these SLAs are the Subscriber’s sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Forcepoint Subscription Agreement.

2. SLAs for SaaS Email Security

2.1 Message Tracking

- For 95% of all emails processed, the following will be available for review in the Message Center within five (5) minutes of receipt of an email: Detailed SMTP logs and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).
- If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Subscriber is using the portal and following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day’s Service Credit for each email log or quarantined email that did not meet this service level, subject to a maximum credit of five (5) days in any one month.

2.2 Service Availability

- The SaaS Email Security service will be available 99.999% of the time.
- SaaS Email Security “Service Unavailability” means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint’s published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day’s Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one month.

2.3 Service Management

- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than sixty (60) seconds.
- If in any one calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes sixty (60) seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day’s Service Credit for each email that takes sixty (60) seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of five (5) days in any one month.
- This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.

2.4 Spam Detection Rates

- Spam will be detected at a rate of 99% or above during each calendar month for Subscriber’s use of the antispam service.
- The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-European language) or emails sent to invalid mailboxes.
- In the event the spam detection rate drops below 99% for a period of more than five (5) days in any one calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one (1) month’s Service Credit.

2.5 Virus Detection

- For Subscribers subscribing to the anti-virus service, Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside email that has passed through the SaaS Email Security service. This excludes links (URLs) inside email messages that take the Subscriber to a website where Viruses can be downloaded.
- A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint’s SaaS Email Security service, at least thirty (30) minutes before the time the email was processed by the SaaS Email Security service. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.
- In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected email. If such action prevents the
infection of the Subscriber’s systems, then the remedy defined in this Section 2.5 shall not apply. Subscriber’s failure to promptly act on such information will also result in the remedy defined in this Section 2.5 being inapplicable.

- In the event that one or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Subscriber’s systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month’s Service Credit, subject to the Subscriber providing evidence acceptable to Forcepoint that the SaaS Email Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

- The Virus Detection SLA for SaaS Email Security will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Subscriber, or by the Subscriber through the email filtering portal, or (c) there is deliberate self-infection by the Subscriber or its authorized user.

### 3. SLAs for SaaS Web Security

#### 3.1 Service Availability

- The SaaS Web Security service will be available 99.999% of the time.

- SaaS Web Security “Service Unavailability” means the SaaS Web Security service being unable to receive, process and forward Web Content in substantial conformance with Forcepoint’s published documentation as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.

- In the event of Service Unavailability for 0.01% or more of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will provide the Subscriber a credit of one day’s Service Credit for each day’s Service Unavailability, subject to a maximum credit of five (5) days in any one calendar month.

#### 3.2 Virus Detection

- Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside Web Content that has passed through the SaaS web protection service module of the SaaS Web Security service.

- A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint’s SaaS Web Security service, at least thirty (30) minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

- In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Subscriber’s systems, then the remedy defined in this Section 3.2 shall not apply. Subscriber’s failure to promptly act on such information will also result in the remedy defined in this Section 3.2 being inapplicable.

- In the event that one or more Known Viruses in any calendar month passes through the SaaS Web Security service undetected and infects the Subscriber’s systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month’s Service Credit, subject to the Subscriber providing evidence that the SaaS Web Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

- The Virus Detection SLA for web security will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Subscriber configured the service to not filter the web content, or (d) there is deliberate self-infection by the Subscriber or its authorized user.

### 4. SLAs for Email Archiving

#### 4.1 Service Availability

- The SaaS email archiving service will be available 99.99% of the time over a calendar month.

- SaaS email archiving “Service Unavailability” means the inability of the email archiving server to receive and transmit Subscriber’s requests to store and retrieve archived email in conformance with Forcepoint’s published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.

- In the event of Service Unavailability for more than 0.01% for any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day’s Service Credit for each calendar month where Service Unavailability exceeds 0.
. FORCEPOINT LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.

"Databases" means proprietary database(s) of URL addresses, email addresses, Malware, applications and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or “Seat” means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee’s email system or network. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

"Error" means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

"GSA Customer Purchase Order" ("Order") means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.

"License" means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software (including the Database, if any) for the term set forth in the Order, and in accordance with this Agreement and the Order.

"License Fees" means the agreed upon license fees for the Software (including the Database, if any) included in an Order based on the GSA Schedule Price List.

"Licensee" means the ordering activity authorized to place an Order against the GSA Schedule Contract GS-35F-0511T on which the Products are included.

"Maintenance" means a limited-term, non-exclusive, non-sublicensable, nontransferable right to: (a) receive the technical support described in Section 5, (b) receive Software Upgrades, if any, (c) receive and use the Database Updates, if any, and (d) use SaaS Email and SaaS Web (when set forth in the Order), in accordance with this Agreement and the Order.

"Maintenance Term" means the agreed upon time period for the provision of Maintenance in an Order. “Permitted Capacity” means the number of Devices, Seats, Users, or other license metrics as set forth in the Order.

"Products" means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS and Forcepoint packaged service offerings.

"SaaS" or "Software as a Service" means Forcepoint’s software-as-a-service offerings, including SaaS Web and/or SaaS Email.

"Software" means Forcepoint’s proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software, but excludes new products for which Forcepoint generally charges a separate fee. “User” means (i) any person utilizing Licensee’s network with access to the Products directly or indirectly, who is an employee, temporary employee, agent, consultant and/or independent contractor (collectively referred to as “personnel,” hereinafter), or guest of Licensee (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee’s email system or network. For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User).

"Virus" or “Malware” means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

"Average Emails Per Seat" or “Average Emails Per User” means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

"Bulk Mail" means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

"SaaS Email" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

"Open Relay" means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server’s email network.

"Spam" means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

"Average Bandwidth Per Seat" or “Average Bandwidth Per User” means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

"Web Content" means any data and requests for data processed by SaaS Web including, but not restricted to that accessed using the Internet protocols HTTP and FTP.

"SaaS Web" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. Software License. Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance, identified in the Order solely for Licensee’s internal
business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its location. Licensee shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee’s use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. ** Provision of SaaS.**

   3.1 Forcepoint will use commercially reasonable efforts to provide SaaS for the Maintenance Term. The then-current Service levels for SaaS are attached Exhibit B for information purposes. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail.

   3.2 If Forcepoint determines that the security or proper function of SaaS would be compromised due to third-party, hacking, denial of service attacks or other activities originating from or directed at Licensee’s network, Forcepoint may immediately suspend SaaS until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.

   3.3 If SaaS is suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS enrollment. It is Licensee’s responsibility to make the server configuration changes necessary to reroute email for SaaS Email and reroute Web Content for SaaS Web.

   3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.

   3.5 Licensee must not use SaaS Email as an Open Relay.

   3.6 Licensee must not use the Products to distribute Spam or Malware.

   3.7 If in any one (1) calendar month the Average Emails per Device, Seat or Average Emails Per User is greater than ten thousand (10,000), Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which SaaS Email scans inbound or outbound email. Licensee’s Average Emails Per Seat or Average Emails Per User must not be greater than thirty thousand (30,000) in any one (1) calendar month.

   3.8 Licensee’s Average Bandwidth Per Seat or Average Bandwidth Per User must not be greater than 0.02Mbps in any one (1) calendar month.

4. ** Licensee Obligations.**

   4.1 Licensee will (a) comply with all applicable federal laws, statutes and regulations, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its personnel, and (c) not use the Products to transmit Spam, Malware, or excessive email as defined in section 3.7.

   4.2 Licensee must (a) have the authority, rights, or permissions to use all domains registered to the Products, and (b) obtain any legally required consents from its personnel, and (c) not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Websense’s express prior written approval.

   4.3 Forcepoint will not be liable for any claims, demands, suits, or proceedings ("Claims") made or brought against Forcepoint by a third party alleging or related to Licensee’s (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) civil or criminal offenses; (iv) transmission or posting of obscene, indecent, or pornographic materials; (v) transmission or posting of any material which is defamatory, slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vi) transmission of information through the Products.

5. **Technical Support.**

   5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Software operates in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under Forcepoint’s Technical Support Policies which are provided for informational purposes as Exhibit A and can be found https://www.forcepoint.com/technical-support-terms-service and https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/ and including the latest release. Database Updates and Software Upgrades will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Permitted Capacity. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available pursuant to the execution of a new or modified Order and are also subject to the terms of this Agreement.

   5.2 Forcepoint’s obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee’s use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

   5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days prior written notice should Licensee not stay current with a supported release in accordance with this Section.

6. **Intellectual Property Rights.** The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Licensee agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement Licensee may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Licensee in this Agreement are reserved to Forcepoint. No ownership of the Products passes to Licensee. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.
7. Protection and Restrictions.

7.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software development plans, software, technology, source code, databases, design drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as “Confidential,” “Proprietary” or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential.

When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement. Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party’s personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

7.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized copies, publication, disclosure or distribution, in any form is prohibited. Licensee may use the Products only for its internal business purposes. Licensee will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee’s personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties; or otherwise use the same on a service bureau basis; (vii) disclose or publish, without Forcepoint’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for its personnel’s compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

8. Reserved.

9. Limited Warranty; Remedies; Disclaimer.

9.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use (“Warranty Period”). Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee’s requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

Licensee must promptly notify Forcepoint during the Warranty Period in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint’s responsibility, Forcepoint shall, within thirty (30) days of its receipt of Licensee’s written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint’s discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee’s sole and exclusive remedy and Forcepoint’s entire liability for any breach of warranty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) the use of the Products inconsistent with the accompanying Documentation, (iii) Licensee’s failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, NOT INCLUDE, AND EXPRESSLY DISCLAIM THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED. NEGLIGENCE, BREECH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED
TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

11. Indemnification. In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. SUBJECT TO FAR 52.212-4(h), THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

12. Term and Termination.

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Maintenance Term, Licensee’s right to receive Maintenance to the Products ends.

12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Licensee’s decision to purchase a license to the products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Licensee must execute an Order for a new License. Licensee’s continued use of the Products after executing a new Order is subject to this Agreement. For purposes of clarification, Licensee is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

12.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, Definitions, 6, Intellectual Property Rights, 7, Protection and Restrictions, 8, Financial Terms, 9, Limited Warranty: Remedies; Disclaimer, 10, Limitation of Liability, 11, Indemnification, 12, Term and Termination, 14, Government Restricted Rights, 15, Export, 16, Compliance and 17, General survive the termination of this Agreement.

13. Compliance with Laws. Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Licensee must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

14. Rights of Government Licensees. The Products meet the definition of “commercial item” in Federal Acquisition Regulation (“FAR”) 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is “commercial computer software” and applicable Documentation and media are “commercial computer software documentation,” as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

15. Export. The Products are subject to export controls of the United States (“Export Controls”). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries (“Prohibited Country” or “Prohibited Countries”). It also prohibits export or re-export of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the “Lists”). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles (“Prohibited Uses”). Licensee represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

16. Compliance. Subject to Government security requirements, Forcepoint has the right to monitor the Licensee’s systems to confirm its authorized use of the Products. Upon Forcepoint’s request Licensee will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager’s operation.

17. General. For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email Licensee may choose to “opt-out” of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Licensee acknowledges and agrees that by sending such email and “opting out” it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send technical support messages to Licensee by email. Licensee acknowledges that Forcepoint may use Licensee’s company name only in a general list of Forcepoint customers, subject to the restrictions contained in GSAR 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Licensee’s and its personnel’s use of the Products for its own purposes outside of the Agreement. Licensee
may not transfer any of Licensee’s rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013).

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party’s reasonable control, including acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F-0296R, the Schedule Price List and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer’s Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.
EXHIBIT A

FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Licensees’ use of Forcepoint Products. Licensees are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support, Premium Support, and Mission Critical Support offerings are additional charge support options, and are only provided after Licensee has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Through the combination of available resources, Licensee can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Licensees receive access to:
   - 24x7x365 online support located at: Support
   - the Knowledgebase and Documentation
   - the Customer Forum
   - Tech Alerts Maintenance
   - download software updates and patches
   - submit and track support cases
   - Five (5) incidents per Maintenance year for telephone and online access to technical support engineers during normal business hours for the region where Licensee is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:
   - Address Licensee open cases in a timely, professional and courteous manner
   - Assign a trouble case number used to track status and as a reference for Licensee inquiries
   - Communicate the status of open cases
   - Log the support activity and provide status updates

2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:
   - 24/7 support for Severity Level 1 & 2 issues
   - No limit on the number of incidents per Maintenance year for telephone and online access to technical support engineers
   - Priority access to technical support engineers
   - Priority support
   - Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on Support at: Global Technical Support Programs

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:
   - An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Licensee’s technical issues
   - Premium Priority access to technical support engineers
   - Premium Priority support

4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Licensee to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Licensee’s environment, the TAM will work with Licensee to:
   - Provide strategic support planning around Licensee’s use of the Forcepoint Products
   - Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Licensee receives access to:
   - Technical Account Manager:
     o Expedited case handling and escalation path
     o Account related inquiries and assistance o Available for an annual on-site visit
   - Collaborative strategic support planning

These benefits are described in more detail at: Global Technical Support Programs

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Licensee in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Licensee to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Licensee will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions

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15 An “incident” is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year maintenance holders may aggregate and use the allotted incidents at any time during the then-current Maintenance Term. Incidents do not rollover to a renewal Maintenance Term. Assisted support for SaaS support will not count as an incident.

and activities of the regional TAMs for the Licensee on a global level. Upon gaining an understanding of Licensee’s environment, the GAM and regional TAMs will work with Licensee to:

- Provide strategic support planning around Licensee’s use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Licensee receives access to:

- Technical Account Manager:
  - Expedited case handling and escalation path
  - Account related inquiries and assistance
  - Collaborative strategic support planning

These benefits are described in more detail at: Global Technical Support Programs

6. **Forcepoint Mission Critical Support Elite**: Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support’s Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Licensee for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: Global Technical Support Programs

7. **Forcepoint Hardware Support**: Hardware support for Forcepoint appliances is available to licensees with current Maintenance for Forcepoint software applications running on the hardware. Support for hardware is available only during the Maintenance Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- “Retain your hard drive” option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Licensee’s business location on record (see Section 10, Licensee Responsibilities)

These benefits are described in more detail at: www.websense.com

For non-Forcepoint branded hardware, Licensee must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times**: Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Licensee by a member of the Forcepoint Technical Support team or by the Licensee online at Support.

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:
For all Forcepoint Products other than Forcepoint SaaS Products:

| Severity Level | Initial Response |  |  |  |  |
|----------------|------------------|------------------|------------------|------------------|
| Severity One (highest severity) Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business | Up to 1 Business Hour | Up to 45 Minutes | Up to 30 Minutes | Up to 30 Minutes | Up to 15 Minutes |
| Severity Two Business is disrupted but functioning. - a Forcepoint product's functionality is severely impacted - Mission critical applications or the majority of users are impacted. | Up to 4 Business Hours | Up to 4 Hours | Up to 3 Hours | Up to 2 Hours | Up to 1 Hour |
| Severity Three Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected | Up to 8 Business Hours | Up to 8 Business Hours | Up to 6 Business Hours | Up to 4 Business Hours | Up to 2 Business Hours |
| Severity Four (lowest severity) A request for information. - Request for product information or questions regarding how to use the product Minimal impact to customer business a request for product modification | Up to 2 Business Days | Up to 2 Business Days | Up to 2 Business Days | Up to 1 Business Day | Up to 1 Business Day | Up to 1 Business Day |
**Hardware On-Site Parts Replacement Response Times:**

<table>
<thead>
<tr>
<th>Hardware Appliance</th>
<th>Initial Response (after phone-based troubleshooting is completed)</th>
<th>Premium &amp; Premium Priority Support</th>
<th>Mission Critical Support (including Global &amp; Elite)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Standard Support</strong></td>
<td><strong>Premium &amp; Premium Priority Support</strong></td>
<td><strong>Mission Critical Support</strong></td>
</tr>
<tr>
<td>V10000</td>
<td>Not Available</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement(^1)(^6)</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement(^2)</td>
</tr>
<tr>
<td>M5000</td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2) (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2) (additional purchase required)</td>
</tr>
<tr>
<td>M7500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M10000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>V5000</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement(^2)(^3)</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement(^2)</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement(^2)</td>
</tr>
<tr>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2)(^3) (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2) (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2) (additional purchase required)</td>
</tr>
<tr>
<td>X10G</td>
<td>Not Available</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement(^2)</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement(^2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2) (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement(^2) (additional purchase required)</td>
</tr>
</tbody>
</table>

\(^1\) Subject to service availability within the service location. For additional information on service availability and locations visit: Support

\(^2\) Standard Support for V5000 is available only with maintenance purchased to Forcepoint Web Security.
For Forcepoint SaaS Products only:
(24/7 Support will be available for Severity Level-One and Level-Two issues.)

<table>
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<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>One - Service unavailable or, if applicable, Virus infection occurring</td>
<td>Up to 1 Business Hour</td>
<td>Up to 45 Minutes</td>
<td>Up to 30 Minutes</td>
<td>Up to 30 Minutes</td>
<td>Up to 15 Minutes</td>
</tr>
<tr>
<td>Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed</td>
<td>Up to 4 Business Hours</td>
<td>Up to 3 Hours</td>
<td>Up to 2 Hours</td>
<td>Up to 2 Hours</td>
<td>Up to 1 Hour</td>
</tr>
<tr>
<td>Three - Service is available, but technical questions or configuration issues</td>
<td>Up to 8 Business Hours</td>
<td>Up to 6 Business Hours</td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Business Hours</td>
<td>Up to 2 Business Hours</td>
</tr>
<tr>
<td>Four – Information Issues, reporting questions, password resets</td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
<td>Up to 1 Business Day</td>
<td>Up to 1 Business Day</td>
<td>Up to 1 Business Day</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initial Response</th>
<th>Resolution Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard</td>
<td>Mission Critical</td>
</tr>
</tbody>
</table>

9. **Service Level Guidelines: Response Time and Request Resolution**:  

**Service Level Compliance**: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day.
- o Business hours are Monday through Friday, during the hours set forth in the region where Licensee resides as set forth at:  
  Contact Support (“Business Hours”) o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Licensees.

**Escalation response levels**: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Licensee on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

**Support for hardware**: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: Target Response Times

10. **Licensee Responsibilities**: In order to efficiently resolve problems, it is important that there be clear and effective communications between Licensee and Forcepoint. The first step of the process requires an accurate reporting of the problem by Licensee. Licensee will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Licensee name
- Maintenance Key information

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17 Service levels are applicable for the software configurations described at Certified Product Matrix. Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.
• Support PIN of the day for Licensee’s Cloud security account
• Technical contact information including: name, telephone number and email address
• Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
• Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Licensee should retain and use this case number in order to facilitate future communications regarding the matter.

In order to receive on-site parts replacement for a hardware Severity One problem, Licensee must keep a current record with Forcepoint of the business location on record for the physical location of the hardware.\(^{18}\) Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

- Licensee must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration\(^{19}\)
- Updates to a physical location must be completed prior to dispatching of authorized technicians
- Licensee or Licensee’s authorized representative must be available when the service technical arrives, or the service technician will not be able to service the hardware\(^{20}\)
- Missed service calls due to Licensee’s unavailability may result in additional charges for the follow-up service call

be provided where:

- Hardware is repurposed or modified from its original configuration
- Hardware has missing or altered serial numbers or Service Tags
- Hardware has been serviced by someone other than a Forcepoint-authorized service provider
- Premium or Mission Critical Support maintenance has expired

11. Technical Support Channels: There are two ways for Licensees to engage support:

- Open a case online at: Support
- Open a case via telephone: Contact Support\(^{8}\)

12. Support Escalation Channels: If after following the procedures for creation of a technical support case Licensee desires to escalate a support issue, the following escalation path to a Technical Support Manager in Licensee’s region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

<table>
<thead>
<tr>
<th>Duty Manager Hotline</th>
<th>Technical Support Americas</th>
<th>1-858-458-2940</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Support Americas</td>
<td>1-858-458-2940</td>
<td>+44-203 02 444 01</td>
</tr>
<tr>
<td>Technical Support APAC Australia/New Zealand:</td>
<td>+61 2 9414 0033</td>
<td>+61 2 9414 0033</td>
</tr>
<tr>
<td>Technical Support APAC India:</td>
<td>+1-858-332-0061</td>
<td>+1-858-332-0061</td>
</tr>
<tr>
<td>Technical Support APAC China, Japan, SE Asia:</td>
<td>+86 (10) 5884-4200</td>
<td>+86 (10) 5884-4200</td>
</tr>
</tbody>
</table>

Escalation contacts are available 24 hours a day, 7 days a week to service Licensee’s Severity 1 business needs.

\(^{18}\) A service technician will only be dispatched after Forcepoint and Licensee have concluded phone-based troubleshooting and determined that a Severity One problem exists.

\(^{19}\) Registrations may take up to 10 business days to complete.

\(^{20}\) In the event that Licensee is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. \(^{4}\) Toll-free numbers are provided for Licensees of Premium and Mission Critical Support in some geographies.
EXHIBIT B

Security Service Level Agreement

1. Terms and Conditions

Forcepoint™ is a premier provider of SaaS security services. Forcepoint provides these SLAs in order to demonstrate its ongoing commitment to provide top-quality SaaS security service offerings for world class organizations and businesses.

1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at Subscription Agreement. The defined terms therein shall have the same meaning when used in this SLA. The current version of these SLAs can be found at Forcepoint SaaS Security Service Level Agreement.

1.2 In order to receive a Service Credit under any of these SLAs, the Subscriber must make a credit request in writing within thirty (30) days of the occurrence of the breach in service levels (or earlier if specifically set forth below). The Subscriber must also promptly provide Forcepoint with evidence as reasonably requested by Forcepoint of the SLA violation subject to the Service Credit request. A “Service Credit” entitles the Subscriber to the free use of the affected SaaS security service for the time period set forth in the applicable SLA.

1.3 Credits for any Subscriber problems with Forcepoint SaaS Security services will be provided under a single SLA for a single claim, with the SLA that the claim is based upon determined by the Subscriber. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

- The SaaS Security service is unavailable for an hour or less, and the Subscriber fails to report the unavailability in writing to Forcepoint within five (5) days thereafter.
- The SaaS Security service is incorrectly configured by the Subscriber.
- The Subscriber provides incorrect configuration information to Forcepoint.
- Forcepoint is performing scheduled or routine maintenance of the SaaS Security service, where the Subscriber has been notified of the maintenance no less than five (5) days in advance.
- The Subscriber’s applications or equipment or Internet connection has failed.
- For SaaS Email Security, where an account is not configured to use two or more co-location sites (clusters).
- The Subscriber has acted as an open relay or open proxy, or has been using the service to send spam or viruses, or otherwise is using the SaaS Security service in violation of the Forcepoint Subscription Agreement.
- The Subscriber has not used the SaaS Security service for thirty (30) days or less.
- The Subscriber is a trial or evaluation customer.
- The failure of the SLA is based on reasons beyond Forcepoint’s reasonable control as set out in the Forcepoint Subscription Agreement.

1.5 The remedies set forth in these SLAs are the Subscriber’s sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Forcepoint Subscription Agreement.

2. SLAs for SaaS Email Security

2.1 Message Tracking

- For 95% of all emails processed, the following will be available for review in the Message Center within five (5) minutes of receipt of an email:
  - Detailed SMTP logs and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).
  - If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Subscriber is using the portal and following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day’s Service Credit for each email log or quarantined email that did not meet this service level, subject to a maximum credit of five (5) days in any one month.

2.2 Service Availability

- The SaaS Email Security service will be available 99.999% of the time.
- SaaS Email Security “Service Unavailability” means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint’s published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.
  - In the event of Service Unavailability for more than 0.001% of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day’s Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one month.

2.3 Service Management

- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than sixty (60) seconds.
  - If in any one calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes sixty (60) seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day’s Service Credit for each email that takes sixty (60) seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of five (5) days in any one month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 MegaBytes or larger in size, denial of service (DOS) attacks, or email loops.

2.4 Spam Detection Rates

- Spam will be detected at a rate of 99% or above during each calendar month for Subscriber’s use of the antispace service.
  - The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-Europenan language) or emails sent to invalid mailboxes.
  - In the event the spam detection rate drops below 99% for a period of more than five (5) days in any one calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one (1) month’s Service Credit.

2.5 Virus Detection

- For Subscribers subscribing to the anti-virus service, Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside email that has passed through the SaaS Email Security service. This includes links (URLs) inside email messages that take the Subscriber to a website where Viruses can be downloaded.
- A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint’s SaaS Email Security service, at least thirty (30) minutes before the time the email was processed by the SaaS Email Security service. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.
  - In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected email. If such action prevents the infection of the Subscriber’s systems, then the remedy defined in this Section 2.5 shall not apply. Subscriber’s failure to promptly act on such information will also result in the remedy defined in this Section 2.5 being inapplicable.
· In the event that one or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Subscriber’s systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month’s Service Credit, subject to the Subscriber providing evidence acceptable to Forcepoint that the SaaS Email Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

· The Virus Detection SLA for SaaS Email Security will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Subscriber, or by the Subscriber through the email filtering portal, or (c) there is deliberate self-infection by the Subscriber or its authorized user.

3. SLAs for SaaS Web Security

3.1 Service Availability

· The SaaS Web Security service will be available 99.999% of the time.

· SaaS Web Security “Service Unavailability” means the SaaS Web Security service being unable to receive, process and forward Web Content in substantial conformance with Forcepoint’s published documentation as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.

· In the event of Service Unavailability for 0.001% or more of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will provide the Subscriber a credit of one day’s Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one calendar month.

3.2 Virus Detection

· Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside Web Content that has passed through the SaaS web protection service module of the SaaS Web Security service.

· A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint’s SaaS Web Security service, at least thirty (30) minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

· In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Subscriber’s systems, then the remedy defined in this Section 3.2 shall not apply. Subscriber’s failure to promptly act on such information will also result in the remedy defined in this Section 3.2 being inapplicable.

· In the event that one or more Known Viruses in any calendar month passes through the SaaS Web Security service undetected and infects the Subscriber’s systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month’s Service Credit, subject to the Subscriber providing evidence that the SaaS Web Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

· The Virus Detection SLA for web security will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Subscriber configured the service to not filter the web content, or (d) there is deliberate self-infection by the Subscriber or its authorized user.

4. SLAs for Email Archiving

4.1 Service Availability

· The SaaS email archiving service will be available 99.99% of the time over a calendar month.

· SaaS email archiving “Service Unavailability” means the inability of the email archiving server to receive and transmit Subscriber’s requests to store and retrieve archived email in conformance with Forcepoint’s published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.

· In the event of Service Unavailability for more than 0.01% for any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day’s Service Credit for each calendar month where Service Unavailability exceeds 0.
FORCEPOINT NETWORK SECURITY PRODUCTS LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.
   “Database” means proprietary database(s) of IPS rules, URL addresses, email addresses, Malware, applications and other valuable information.
   “Database Updates” means changes to the content of the Database.
   “Device” or “Node” means any kind of computer, electronic appliance, or device capable of processing data, including without limitation diskless workstations, personal computer workstations, networked computer workstations, homeworker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANs), terminal servers or portable workstations connected or connecting to the server(s) or network that is authorized to access or use the Products, directly or indirectly. In the case of a virtual system, each virtual machine or instance running the Product is considered to be a Device or Node.
   “Documentation” means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.
   “Error” means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.
   “Forcepoint” means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd, 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.
   “GSA Customer Purchase Order” (“Order”) means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.
   “Hardware” or “Unit” means a single instance of computer hardware purchased from Forcepoint as described in the Order. “License” means the limited, personal, non-sublicensable, non-exclusive, nontransferrable right to use the Software (including the Database) for the term set forth in the Order, in combination with the Hardware (if provided in the Order), and in accordance with this Agreement and the Order.
   “License Fees” means the agreed upon license fees for the Software (including the Database) included in an Order based on the GSA Schedule Price List.
   “Licensee” means the ordering entity authorized to place an Order against the GSA Schedule Contract GS-35F-0511T on which the Products are included.
   “Maintenance” means a limited, non-exclusive, personal, non-sublicensable, nontransferable right to receive during the Maintenance Term: (a) the technical support described in Section 5 (Technical Support), and (b) Software Upgrades, if any.
   “Maintenance Term” means the agreed upon time period for the provision of Maintenance in an Order. “Permitted Capacity” means the number of Devices, Units, Nodes, or other license metrics as set forth in the Order.
   “Products” means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Hardware, and Forcepoint packaged service offerings.
   “Software” means Forcepoint’s proprietary software applications, in object code only.
   “Software Upgrades” means certain modifications or revisions to the Software and/or the Database, provided solely pursuant to Maintenance, but excludes new products for which Forcepoint generally charges a separate fee.
   “Subscription” means a limited, non-exclusive, personal, non-sublicensable, nontransferrable right during the Subscription Term to: (a) receive and use the Database Updates, and (b) use the Products, in accordance with this Agreement and the Order. “Subscription Fees” means the agreed upon fees in an Order.
   “Subscription Term” means the agreed upon time period in an Order.
   “Virus” or “Malware” means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

2. Software License. Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License and if applicable a Subscription to use the Software and Software Upgrades provided pursuant to Maintenance identified in the Order solely for Licensee’s internal business purposes up to the Permitted Capacity. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with the Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Hardware, and Forcepoint packaged service offerings. Licensee shall not and shall not permit anyone else to copy the Products, other than copies made solely for data backup and backup recovery testing purposes. Except as otherwise set forth in this Agreement, any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Licensee understands that its right to use the Products is limited by the Permitted Capacity, and Licensee’s Use combined use may in no event exceed the authorized Permitted Capacity. If Licensee’s use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. Technical Support
   3.1 The support period is defined in the Order, and begins (i) on the date of the Order if a new purchase, or (ii) on the renewal date of the expiration of a previous support period. Product technical support includes standard technical support, Error corrections or workarounds so that the Software operates in substantial conformance with the Documentation provided under Forcepoint’s Technical Support Policies which are provided for informational purposes as Exhibit A and can be found at https://www.forcepoint.com/technical-support-policies. Standard technical support includes online website and portal access, and telephone support during business hours. Maintenance will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Support Term. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available for additional cost and are also subject to the terms of this Agreement. In the event Product support expires prior to renewing support Licensee must also purchase technical support to cover the lapsed support period between the date technical support expires and the date it is renewed. In the event technical support has lapsed for one year or more,

3.2 Forcepoint’s obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee’s use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

3.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days prior written notice should Licensee not stay current with a supported release in accordance with this Section.

3.4 For the support period set forth in an Order, the Hardware support covers defects in materials and workmanship in the Hardware. The Hardware support does not cover: (a) software, including the operating system and software added to the Hardware, or the reloading of software; (b) non-Forcepoint products and accessories; (c) problems to the extent they result from (i) external causes such as accident, abuse, misuse, or problems with electrical power, (ii) servicing not authorized by Forcepoint, (iii) usage that is not in accordance with Hardware instructions, (iv) failure to follow the Hardware instructions or failure to perform preventive maintenance, (v) problems caused by using accessories, parts, or components not supplied or directed by Forcepoint; (d) normal wear and tear; and (e) Hardware with missing or altered service tags or serial numbers.


4.1 The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Licensee agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement. Licensee may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. No ownership of the Products passes to Licensee. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent. The Products may include programs or code that are licensed under an Open Source Software (“OSS”) license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license, and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

4.2 The Hardware is sold by Forcepoint subject to the condition that the sale does not convey any license under any patent claim covering complete equipment, or any assembly, circuit combination, method or process in which any such Hardware are used as components. However, upon sale, title for the Hardware equipment shall pass to Licensee. Forcepoint, its licensors or suppliers retain all proprietary rights in and to any Hardware sold. Forcepoint and its suppliers reserve all rights under such patent claims. Any software supplied with the Hardware is proprietary to Forcepoint or its licensors, and use of the software is subject to the terms of this Agreement.

5. Protection and Restrictions.

5.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as “Confidential,” “Proprietary” or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or contract compliance purposes, or for any purpose for which the GSA Customer is legally required to be retained. Such retention of Confidential Information is subject to the terms and conditions of this Agreement. Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party’s personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information may be released, despite being characterized as "confidential" by the vendor. 5.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for its internal business use. Licensee will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code algorithms, tools, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee’s personnel who have a need for such access and access who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products independently from the Forcepoint proprietary products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products independently from the Forcepoint proprietary products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products independently from the Forcepoint proprietary products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products independently from the Forcepoint proprietary products.
solely for the benefit of Licensee; provided, however, Licensee remains responsible for its personnel’s compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

6. Reserved.

7. Limited Warranty; Remedies; Disclaimer.

7.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and this Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use (“Warranty Period”). Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee’s requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

7.2 Licensee, as promptly notify Forcepoint during the Warranty Period of any breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint’s responsibility, Forcepoint shall, within thirty (30) days of its receipt of Licensee’s written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint’s discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee’s sole and exclusive remedy and Forcepoint’s entire liability for any breach of warranty related to the Products.

7.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee’s failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

7.4 THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE IN LIEU OF, AND FORCEPOINT EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

8. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS AND PROPERTY LOSS OR DAMAGE TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; or (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. Indemnification. In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys’ fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. SUBJECT TO FAR 52.212-4 (h), THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

10. Term and Termination.

10.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Maintenance Term, Licensee’s right to receive Maintenance to the Products ends.

10.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Licensee’s decision to purchase a license to the products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Licensee must execute an Order for a new license. Licensee’s continued use of the Products after executing a new Order is subject to this Agreement. For purposes of clarification, Licensee is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

10.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as provided under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1 Definitions, 4 Intellectual Property Rights, 5 Protections and Restrictions, 7 Limited Warranty; Remedies; Disclaimer, 8
Limitation of Liability, 9 Indemnification, 10 Term and Termination, 12 Rights of Government Licensees, 13 Export, 14 Compliance, 15 General shall survive the termination of this Agreement.

11. Compliance with Laws. Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Licensee must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

12. Rights of Government Licensees. The Products meet the definition of “commercial item” in Federal Acquisition Regulation (“FAR”) 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is “commercial computer software” and applicable Documentation and media are “commercial computer software documentation,” as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint’s proprietary rights therein, and of the exclusive applicability of this Agreement.

13. Export. The Products are subject to export controls of the United States (“Export Controls”). Export or diversion contrary to U.S. and E.U. law is prohibited. U.S. and E.U. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries (“Prohibited Country” or “Prohibited Countries”). It also prohibits export or re-export of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the “Lists”). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles (“Prohibited Uses”). Licensee represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

14. Compliance. Subject to Government security requirements, Forcepoint has the right to monitor the Licensee’s systems to confirm its authorized use of the Products. Upon Forcepoint’s request Licensee will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager’s operation.

15. General. For the purposes of customer service, technical support, and as a means of facilitating interactions with its endusers, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email. Licensee may choose to opt-out of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Licensee acknowledges and agrees that by sending such email and “opting out” it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers subject to the restrictions contained in GSAR 525.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Licensee's and its personnel's use of the Products for its own purposes outside of the Agreement. Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 “Assignment of Claims” (May 2014) and FAR subpart 42.12 “Novation and Change-Of-Name Agreements.”. Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. In the absence of specific shipping instructions, Forcepoint will ship Hardware by the method it deems most advantageous using standard commercial packaging. Forcepoint is responsible for obtaining insurance against damage to the Hardware during shipment. At the time Hardware is picked up by the common carrier from a Forcepoint location it is delivered, and title and risk of loss passes to Licensee. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F0511T, the Schedule Price List, and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer’s Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.
Exhibit A

FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Subscribers’ use of Forcepoint Products. Subscribers are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support is included with a Subscription upon payment of the associated Subscription Fees. All Premium Support and Mission Critical Support offerings are additional charge support options, and are only provided after Subscriber has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Forcepoint Standard Support is included with the Subscription. Through the combination of available resources, Subscriber can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Subscribers receive access to:
   - 24x7x365 online support located at: [Support](https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/)
   - the Knowledgebase and Documentation
   - the Customer Forum
   - Tech Alerts Subscription
   - download software updates and patches • submit and track support cases
   - Five (5) incidents\(^{21}\) per Subscription year for telephone and online access to technical support engineers during normal business hours for the region where Subscriber is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:
   - Address Subscriber open cases in a timely, professional and courteous manner
   - Assign a trouble case number used to track status and as a reference for Subscriber inquiries
   - Communicate the status of open cases
   - Log the support activity and provide status updates

2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:
   - 24/7 support for Severity Level 1 & 2 issues
   - No limit on the number of incidents per Subscription year for telephone and online access to technical support engineers
   - Priority access to technical support engineers
   - Priority support
   - Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on Support at: [Global Technical Support Programs](https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/)

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:
   - An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Subscriber’s technical issues
   - Premium Priority access to technical support engineers
   - Premium Priority support

4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Subscriber to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Subscriber’s environment, the TAM will work with Subscriber to:
   - Provide strategic support planning around Subscriber’s use of the Forcepoint Products
   - Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Subscriber receives access to:
   - Technical Account Manager:
     - Expedited case handling and escalation path • Account related inquiries and assistance • Available for an annual on-site visit
     - Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/)

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Subscriber in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Subscriber to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Subscriber will also be provided with a Global Account Manager (GAM) who oversees and

\(^{21}\) An “incident” is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year subscription holders may aggregate and use the allotted incidents at any time during the then-current Subscription Term. Incidents do not rollover to a renewal Subscription Term. Assisted support for SaaS support will not count as an incident.
organizes the actions and activities of the regional TAMs for the Subscriber on a global level. Upon gaining an understanding of Subscriber’s environment, the GAM and regional TAMs will work with Subscriber to:

- Provide strategic support planning around Subscriber’s use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Subscriber receives access to:

- Technical Account Manager:
  - Expedited case handling and escalation path
  - Account related inquiries and assistance
  - Collaborative strategic support planning

These benefits are described in more detail at: Global Technical Support Programs

6. **Forcepoint Mission Critical Support Elite:** Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support’s Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Subscriber for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: Global Technical Support Programs

7. **Forcepoint Hardware Support:** Hardware support for Forcepoint appliances is available to subscribers with a current Subscription for Forcepoint software applications running on the hardware. Support for hardware is available only during the Subscription Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- “Retain your hard drive” option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Subscriber’s business location on record (see Section 10, Subscriber Responsibilities)

These benefits are described in more detail at: www.forcepoint.com

For non-Forcepoint branded hardware, Subscriber must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times:** Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Subscriber by a member of the Forcepoint Technical Support team or by the Subscriber online at Support.

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:
For all Forcepoint Products other than Forcepoint SaaS Products:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Support</td>
</tr>
<tr>
<td></td>
<td>Standard</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Severity One (highest severity)</strong></td>
<td></td>
</tr>
<tr>
<td>Business is severely impacted.</td>
<td></td>
</tr>
<tr>
<td>- a Forcepoint product is not</td>
<td></td>
</tr>
<tr>
<td>functioning and no viable workarounds</td>
<td></td>
</tr>
<tr>
<td>are available - Customer environment</td>
<td></td>
</tr>
<tr>
<td>compromised or at risk for significant</td>
<td></td>
</tr>
<tr>
<td>data corruption - Mission critical</td>
<td></td>
</tr>
<tr>
<td>application is down or the majority</td>
<td></td>
</tr>
<tr>
<td>of users are not able to conduct</td>
<td></td>
</tr>
<tr>
<td>business</td>
<td></td>
</tr>
<tr>
<td><strong>Severity Two</strong></td>
<td></td>
</tr>
<tr>
<td>Business is disrupted but functioning</td>
<td></td>
</tr>
<tr>
<td>- a Forcepoint product’s functionality</td>
<td></td>
</tr>
<tr>
<td>is severely impacted</td>
<td></td>
</tr>
<tr>
<td>- Mission critical applications or the</td>
<td></td>
</tr>
<tr>
<td>majority of users are impacted.</td>
<td></td>
</tr>
<tr>
<td><strong>Severity Three</strong></td>
<td></td>
</tr>
<tr>
<td>Business is not affected but symptoms</td>
<td></td>
</tr>
<tr>
<td>exist.</td>
<td></td>
</tr>
<tr>
<td>- a Forcepoint product is functioning</td>
<td></td>
</tr>
<tr>
<td>in a restricted fashion and a workar</td>
<td></td>
</tr>
<tr>
<td>round exists - Mission critical</td>
<td></td>
</tr>
<tr>
<td>applications are functional with some</td>
<td></td>
</tr>
<tr>
<td>end users affected</td>
<td></td>
</tr>
<tr>
<td><strong>Severity Four (lowest severity)</strong></td>
<td></td>
</tr>
<tr>
<td>A request for information.</td>
<td></td>
</tr>
<tr>
<td>Request for product information or</td>
<td></td>
</tr>
<tr>
<td>questions regarding how to use the</td>
<td></td>
</tr>
<tr>
<td>product</td>
<td></td>
</tr>
<tr>
<td>Minimal impact to customer business</td>
<td></td>
</tr>
<tr>
<td>a request for product modification</td>
<td></td>
</tr>
</tbody>
</table>

Hardware On-Site Parts Replacement Response Times:
<table>
<thead>
<tr>
<th>Hardware Appliance</th>
<th>Initial Response (after phone-based troubleshooting is completed)</th>
<th>Standard Support</th>
<th>Premium &amp; Premium Priority Support</th>
<th>Mission Critical Support (including Global &amp; Elite)</th>
</tr>
</thead>
<tbody>
<tr>
<td>V10000</td>
<td></td>
<td></td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement</td>
</tr>
<tr>
<td>M5000</td>
<td></td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement (additional purchase required)</td>
</tr>
<tr>
<td>M7500</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M10000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>V5000</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement 2 3</td>
<td></td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement 2</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement 2</td>
</tr>
<tr>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement 2 3 (additional purchase required)</td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement 2 (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement 2 (additional purchase required)</td>
</tr>
<tr>
<td>X10G</td>
<td></td>
<td></td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement 2</td>
<td>Standard 3-Year, 4-Hour Onsite Parts Replacement 2</td>
</tr>
<tr>
<td></td>
<td>Not Available</td>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement 2 (additional purchase required)</td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement 2 (additional purchase required)</td>
</tr>
</tbody>
</table>

22 Subject to service availability within the service location. For additional information on service availability and locations visit: Support 3

Standard Support for V5000 is available only with a subscription purchased to Forcepoint Web Security.
For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
<th>Resolution Target</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
<td>Premium</td>
</tr>
<tr>
<td></td>
<td>Up to 1 Business Hour</td>
<td>Up to 45 Minutes</td>
</tr>
<tr>
<td></td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Hours</td>
</tr>
<tr>
<td></td>
<td>Business Hours</td>
<td>Up to 6 Business Hours</td>
</tr>
<tr>
<td></td>
<td>Up to 8 Business Hours</td>
<td>Up to 8 Business Hours</td>
</tr>
<tr>
<td></td>
<td>Business Days</td>
<td>Up to 2 Business Days</td>
</tr>
<tr>
<td></td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
</tr>
</tbody>
</table>

9. Service Level Guidelines: Response Time and Request Resolution:

Service Level Compliance: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day.
  - Business hours are Monday through Friday, during the hours set forth in the region where Subscriber resides as set forth at: Contact Support (“Business Hours”)
  - For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Subscribers.

Escalation response levels: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Subscriber on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

Support for hardware: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: Target Response Times

10. Subscriber Responsibilities: In order to efficiently resolve problems, it is important that there be clear and effective communications between Subscriber and Forcepoint. The first step of the process requires an accurate reporting of the problem by Subscriber. Subscriber will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Subscriber name
- Subscription Key information
- Support PIN of the day for Subscriber’s Cloud security account

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23 Service levels are applicable for the software configurations described at Certified Product Matrix. Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.
• Technical contact information including: name, telephone number and email address
• Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
• Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Subscriber should retain and use this case number in order to facilitate future communications regarding the matter.

In order to receive on-site parts replacement for a hardware Severity One problem, Subscriber must keep a current record with Forcepoint of the business location on record for the physical location of the hardware. Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

• Subscriber must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration
• Updates to a physical location must be completed prior to dispatching of authorized technicians
• Subscriber or Subscriber’s authorized representative must be available when the service technician arrives, or the service technician will not be able to service the hardware
• Missed service calls due to Subscriber’s unavailability may result in additional charges for the follow-up service call

be provided where:

• Hardware is repurposed or modified from its original configuration
• Hardware has missing or altered serial numbers or Service Tags
• Hardware has been serviced by someone other than a Forcepoint-authorized service provider
• Premium or Mission Critical Support subscription has expired

11. Technical Support Channels: There are two ways for Subscribers to engage support:

• Open a case online at: Support
• Open a case via telephone: Contact Support

12. Support Escalation Channels: If after following the procedures for creation of a technical support case Subscriber desires to escalate a support issue, the following escalation path to a Technical Support Manager in Subscriber’s region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

<table>
<thead>
<tr>
<th>Duty Manager Hotline</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Support Americas</td>
<td>1-858-458-2940</td>
</tr>
<tr>
<td>Technical Support EMEA</td>
<td>+44-203 02 444 01</td>
</tr>
<tr>
<td>Technical Support APAC</td>
<td></td>
</tr>
<tr>
<td>Australia/New Zealand:</td>
<td>+61 2 9414 0033</td>
</tr>
<tr>
<td>India:</td>
<td>+1-858-332-0061</td>
</tr>
<tr>
<td>China, Japan, SE Asia:</td>
<td>+86 (10) 5884-4200</td>
</tr>
</tbody>
</table>

Escalation contacts are available 24 hours a day, 7 days a week to service Subscriber’s Severity 1 business needs.

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24 A service technician will only be dispatched after Forcepoint and Subscriber have concluded phone-based troubleshooting and determined that a Severity One problem exists.
25 Registrations may take up to 10 business days to complete.
26 In the event that Subscriber is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. Toll-free numbers are provided for Subscribers of Premium and Mission Critical Support in some geographies.
THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT THE GSA CUSTOMER ("SUBSCRIBER") AGREES TO THE TERMS AND CONDITIONS IN THIS SUBSCRIPTION AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN SUBSCRIBER AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.

"Databases" means proprietary database(s) of URL addresses, email addresses, Malware, applications and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or “Seat” means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Subscriber’s email system or netwo rk. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Subscriber. "GSA Customer Purchase Order” means the ordering activity authorized to place an Order against the GSA Schedule Contract, GS-35F-0511T on which the Products are included.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., Suite 400, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement. "GSA Custom Purchase Order ("Order") means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.

"Permitted Capacity” means the number of Devices, Seats, Users, or other license metrics as set forth in the Order. "Products” means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS, and Forcepoint packaged service offerings. "SaaS" or "Software as a Service” means Forcepoint's software-as-a-service offerings, including SaaS Web and/or SaaS Email.

"Software” means Forcepoint’s proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software, but excludes new products for which Forcepoint generally charges a separate fee.

"Subscriber” means the ordering activity authorized to place an Order against the GSA Schedule Contract, GS-35F-0511T on which the Products are included.

"Subscription" means a non-exclusive, nontransferable right to use the Products in accordance with this Agreement and the Order.

"Subscription Fees” means the agreed upon fees in an Order based on the GSA Schedule Price List.

"Subscription Term” means the agreed upon time period in an Order.

"User” means (i) any person utilizing Subscriber’s network with access to the Products directly or indirectly, who is an employee, temporary employee, agent, consultant and/or independent contractor (collectively referred to as “personnel,” hereinafter), or guest of Subscriber (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Subscriber’s email system or network. For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User). "Virus” or “Malware” means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

"Average Emails Per Seat” or “Average Emails Per User” means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

"Bulk Mail” means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

"SaaS Email” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

"Open Relay” means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server's email network.

"Spam” means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

"Average Bandwidth Per Seat” or “Average Bandwidth Per User” means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

"Web Content” means any data and requests for data processed by SaaS Web including, but not restricted to that accessed using the Internet protocols HTTP and FTP.

"SaaS Web” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. Product Subscription. Subject to the provisions contained in this Agreement, and timely payment of the applicable fees, Forcepoint hereby grants Subscriber, for the Subscription Term, a Subscription, to use the Products identified in the Order solely for Subscriber’s internal business purposes up to the Permitted Capacity set forth in the Order. Subject to compliance with the terms of this Agreement, Subscriber may relocate or transfer the on-premise Product for use on a different server within its location. Subscriber shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Subscriber by Forcepoint is subject to the terms of this Agreement. Subscriber understands that its right to use the Products is limited by
the Permitted Capacity purchased, and Subscriber’s use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Subscriber has committed to for the Subscription Term. If Subscriber’s use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. **Provision of SaaS.**

3.1 Forcepoint will use commercially reasonable efforts to provide SaaS for the Subscription Term. The then-current Service levels for SaaS are attached as Exhibit B for information purposes. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail.

3.2 If Forcepoint determines that the security or proper function of SaaS would be compromised due to third-party, hacking, denial of service attacks or other activities originating from or directed at Subscriber’s network, Forcepoint may immediately suspend SaaS until the problem is resolved. Forcepoint will promptly notify and work with Subscriber to resolve the issues.

3.3 If SaaS is suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS enrollment. It is Subscriber’s responsibility to make the server configuration changes necessary to reroute email for SaaS Email and reroute Web Content for SaaS Web.

3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.

3.5 Subscriber must not use SaaS Email as an Open Relay.

3.6 Subscriber must not use the Products to distribute Spam or Malware.

3.7 If in any one (1) calendar month the Average Emails Per Seat or Average Emails Per User is greater than ten thousand (10,000), Subscriber will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Subscriber for which SaaS Email scans inbound or outbound email. Subscriber’s Average Emails Per Seat or Average Emails Per User must not be greater than thirty thousand (30,000) in any one (1) calendar month.

3.8 Subscriber’s Average Bandwidth Per Seat or Average Bandwidth Per User must not be greater than 0.02Mbps in any one (1) calendar month.

4. **Subscriber Obligations.**

4.1 Subscriber will (a) comply with all applicable federal laws, statutes and regulations, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its personnel, and (c) not use the Products to transmit Spam, Malware, or excessive email as defined in section 3.7.

4.2 Subscriber must (a) have the authority, rights, or permissions to use all domains registered to the Products, and (b) obtain any legally required consents from its personnel, and (c) not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Websense’s express prior written approval.

4.3 Forcepoint will not be liable for any claims, demands, suits, or proceedings (“Claims”) made or brought against Forcepoint by a third party alleging or related to Subscriber’s (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) civil or criminal offenses; (iv) transmission or posting of obscene, indecent, or pornographic materials; (v) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vi) transmission of information through the Products.

5. **Technical Support.**

5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under Forcepoint’s Technical Support Policies which are provided for informational purposes as Exhibit A and can be found at https://www.forcepoint.com/technicalsupportterms-service-and-description. Standard technical support includes online website and portal access, and telephone support during business hours. Database Updates and Software Upgrades will be provided to Subscriber if Forcepoint may require Subscriber to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available pursuant to the execution of a new or modified Order and are also subject to the terms of this Agreement.

5.2 Forcepoint’s obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Subscriber’s use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product.

6. **Intellectual Property Rights.** The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and...
Subscriber agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Subscriber under this Agreement. Subscriber may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Subscriber in this Agreement are reserved to Forcepoint. No ownership of the Products passes to Subscriber. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Subscriber may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

7. Protection and Restrictions.

7.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as “Confidential,” “Proprietary” or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party’s personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information may be released, despite being characterized as “confidential” by the vendor. For the avoidance of doubt, Licensee agrees that Licensee’s initial response to any such request to provide Forcepoint Products will be to assert the trade secret exceptions to any disclosure requirements.

7.2 Subscriber will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Subscriber may use the Products only for its internal business purposes. Subscriber will not itself, or through, its personnel or other third party; (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Subscriber’s personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a ‘service bureau’ basis; (vii) disclose or publish, without Forcepoint’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Subscriber may allow its personnel to use the Products solely for the benefit of Subscriber; provided, however, Subscriber remains responsible for its personnel’s compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

8. Reserved.

9. Limited Warranty; Remedies; Disclaimer.

9.1 For the Subscription Term, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and Agreement by Subscriber, will operate in substantial conformance with the Documentation under normal use. Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Subscriber’s requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

9.2 Subscriber must promptly notify Forcepoint in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint’s responsibility, Forcepoint shall, within thirty (30) days of its receipt of Subscriber’s written notice, (i) correct the Error or provide a workaround; (ii) provide Subscriber with a plan reasonably acceptable to Subscriber for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint’s discretion, then Forcepoint may terminate the affected Product Subscription and Subscriber will be entitled to a refund of the unused Subscription Fees paid for the affected Product.
applicable to the balance of the then-current Subscription Term. This paragraph sets forth Subscriber’s sole and exclusive remedy and Forcepoint’s entire liability for any breach of warranty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Subscriber’s failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSEES, OR RESELLERS WILL NOT BE LIABLE FOR (1) LOST PROFITS; (2) LOSS OF BUSINESS; (3) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; OR (4) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law.

11. Indemnification. In the event of a third-party claim, suit or proceeding against Subscriber asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its own expense will defend Subscriber and indemnify Subscriber against costs, expenses (including reasonable attorneys’ fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint’s obligation under this section is contingent upon Subscriber providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Subscriber to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Subscriber’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Subscriber the unused Subscription Fees paid for the affected Product applicable to the balance of the then-current Subscription Term.

SUBJECT TO FAR 52.212-4(h), THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND SUBSCRIBER’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

12. Term and Termination.

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Subscription Term, Subscriber’s right to use the Products ends.

12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that: (i) evaluation subscriptions may only be used to evaluate and facilitate Subscriber’s decision to purchase a subscription to Products; and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Subscriber must execute an Order for a new Subscription. Subscriber’s continued use of the Products after executing a new Order is subject to the terms of this Agreement. For purposes of clarification, Subscriber is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

12.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract; pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Subscriber must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and certify in writing that all known copies thereof, including backup copies, have been destroyed.

Sections 1, Definitions, 6, Intellectual Property Rights, 7, Protection and Restrictions, 8, Financial Terms, 9, Limited Warranty: Remedies; Disclaimer, 10, Limitation of Liability, 11, Indemnification, 12, Term and Termination, 14, Government Restricted Rights, 15, Export, 16, Compliance and 17, General survive the termination of this Agreement.

13. Compliance with Laws. Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Subscriber must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

14. **Government Restricted Rights.** The Products are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in FAR 52.227-14 “Rights in Data” (Dec. 2007) and DFARS 252.227-70155 “Technical Data-Commercial Items” or its successors. The U.S. Government acknowledges Forcepoint's proprietary rights in the products and services. Contractor or Manufacturer is Forcepoint.

15. **Export.** The Products are subject to export controls of the United States ("Export Controls"). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries ("Prohibited Country" or "Prohibited Countries"). It also prohibits export or re-export of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the "Lists"). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles ("Prohibited Uses"). Subscriber represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

16. **Compliance.** Subject to Government security requirements, Forcepoint has the right to monitor the Subscriber’s systems to confirm its authorized use of the Products. Upon Forcepoint’s request, Subscriber will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Subscriber acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager’s operation.

17. **General.** For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Subscriber messages of an informational or advertising nature via email. Subscriber may choose to "opt-out" of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Subscriber acknowledges and agrees that by sending such email and "opting out" it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Subscriber acknowledges that Forcepoint may use Subscriber’s company name only in a general list of Forcepoint customers, subject to the restrictions contained in GSAR 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Subscriber or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Subscriber’s and its personnel’s use of the Products for its own purposes outside of the Agreement. Subscriber may not transfer any of Subscriber’s rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013).

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party’s reasonable control, including acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F-0296R, the Schedule Price List and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer’s Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Subscriber agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.
FORCEPOINT TECHNICAL SUPPORT

Subscribers are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support is included with a Subscription upon payment of the associated Subscription Fees. All Premium Support and Mission Critical Support offerings are additional charge support options, and are only provided after Subscriber has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support**: Forcepoint Standard Support is included with the Subscription. Through the combination of available resources, Subscriber can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Subscribers receive access to:

   - 24x7x365 online support located at: Support
   - the Knowledgebase and Documentation
   - the Customer Forum
   - Tech Alerts Subscription
   - download software updates and patches
   - submit and track support cases
   - Five (5) incidents per Subscription year for telephone and online access to technical support engineers during normal business hours for the region where Subscriber is located

   The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:

   - Address Subscriber open cases in a timely, professional and courteous manner
   - Assign a trouble case number used to track status and as a reference for Subscriber inquiries
   - Communicate the status of open cases
   - Log the support activity and provide status updates

2. **Forcepoint Premium Support**: Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:

   - 24/7 support for Severity Level 1 & 2 issues
   - No limit on the number of incidents per Subscription year for telephone and online access to technical support engineers
   - Priority access to technical support engineers
   - Priority support
   - Severity three and four issues will be worked during regular business hours only

   These benefits are described in more detail on Support at: Global Technical Support Programs

3. **Forcepoint Premium Priority Support**: Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:

   - An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Subscriber’s technical issues
   - Premium Priority access to technical support engineers
   - Premium Priority support

4. **Forcepoint Mission Critical Support**: Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Subscriber to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Subscriber’s environment, the TAM will work with Subscriber to:

   - Provide strategic support planning around Subscriber’s use of the Forcepoint Products
   - Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

   With Mission Critical Support, Subscriber receives access to:

   - Technical Account Manager:
     - Expedited case handling and escalation path
     - Account related inquiries and assistance
     - Available for an annual on-site visit
     - Collaborative strategic support planning

   These benefits are described in more detail at: Global Technical Support Programs

5. **Forcepoint Mission Critical Support Global**: Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Subscriber in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Subscriber to support performance, reliability and availability of the Forcepoint

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An “incident” is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year subscription holders may aggregate and use the allotted incidents at any time during the then-current Subscription Term. Incidents do not rollover to a renewal Subscription Term. Assisted support for SaaS support will not count as an incident.
Products. In addition to regional TAM coverage the Subscriber will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions and activities of the regional TAMs for the Subscriber on a global level. Upon gaining an understanding of Subscriber’s environment, the GAM and regional TAMs will work with Subscriber to:

- Provide strategic support planning around Subscriber’s use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Subscriber receives access to:

- Technical Account Manager:
  - Expedited case handling and escalation path
  - Account related inquiries and assistance
  - Collaborative strategic support planning

These benefits are described in more detail at: Global Technical Support Programs

6. Forcepoint Mission Critical Support Elite: Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support's Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Subscriber for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: Global Technical Support Programs

7. Forcepoint Hardware Support: Hardware support for Forcepoint appliances is available to subscribers with a current Subscription for Forcepoint software applications running on the hardware. Support for hardware is available only during the Subscription Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- “Retain your hard drive” option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Subscriber’s business location on record (see Section 10, Subscriber Responsibilities)

These benefits are described in more detail at: www.forcepoint.com

For non-Forcepoint branded hardware, Subscriber must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. Forcepoint Technical Support Targeted Response Times: Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Subscriber by a member of the Forcepoint Technical Support team or by the Subscriber online at Support.

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:
For all Forcepoint Products other than Forcepoint SaaS Products:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
</tr>
</tbody>
</table>

### Severity One (highest severity)
Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business

<table>
<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Premium</th>
<th>Mission Critical</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Up to 1 Business Hour</td>
<td>Up to 45 Minutes</td>
<td>Up to 30 Minutes</td>
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</tbody>
</table>

### Severity Two
Business is disrupted but functioning. - a Forcepoint product’s functionality is severely impacted - Mission critical applications or the majority of users are impacted.

<table>
<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Premium</th>
<th>Mission Critical</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Hours</td>
<td>Up to 3 Hours</td>
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<td></td>
<td></td>
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</tbody>
</table>

### Severity Three
Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected

<table>
<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Premium</th>
<th>Mission Critical</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Up to 8 Business Hours</td>
<td>Up to 8 Business Hours</td>
<td>Up to 6 Business Hours</td>
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<td></td>
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</tr>
</tbody>
</table>

### Severity Four (lowest severity)
A request for information. - Request for product information or questions regarding how to use the product - Minimal impact to customer business - a request for product modification

<table>
<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Premium</th>
<th>Mission Critical</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
<td>Up to 1 Business Day</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

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Hardware On-Site Parts Replacement Response Times:

<table>
<thead>
<tr>
<th>Hardware Appliance</th>
<th>Initial Response (after phone-based troubleshooting is completed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>V10000</td>
<td>Not Available</td>
</tr>
<tr>
<td>M5000</td>
<td></td>
</tr>
<tr>
<td>M7500</td>
<td></td>
</tr>
<tr>
<td>M10000</td>
<td></td>
</tr>
<tr>
<td>V5000</td>
<td>Standard 3-Year, Next Business Day Onsite Parts Replacement&lt;sup&gt;2,3&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Optional 5-Year, 4-Hour Onsite Parts Replacement&lt;sup&gt;2,3&lt;/sup&gt; (additional purchase required)</td>
</tr>
<tr>
<td>X10G</td>
<td>Not Available</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<sup>28</sup> Subject to service availability within the service location. For additional information on service availability and locations visit: Support<sup>3</sup> Standard Support for V5000 is available only with a subscription purchased to Forcepoint Web Security.
For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
<th>Resolution Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>One - Service unavailable or, if applicable, Virus infection occurring</td>
<td>Up to 1 Business Hour</td>
<td>Up to 45 Minutes</td>
</tr>
<tr>
<td>Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed</td>
<td>Up to 4 Business Hours</td>
<td>Up to 4 Hours</td>
</tr>
<tr>
<td>Three - Service is available, but technical questions or configuration issues</td>
<td>Up to 8 Business Hours</td>
<td>Up to 8 Business Hours</td>
</tr>
<tr>
<td>Four – Information Issues, reporting questions, password resets</td>
<td>Up to 2 Business Days</td>
<td>Up to 2 Business Days</td>
</tr>
</tbody>
</table>

9. Service Level Guidelines: Response Time and Request Resolution:

Service Level Compliance: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day. o Business hours are Monday through Friday, during the hours set forth in the region where Subscriber resides as set forth at: Contact Support (“Business Hours”) o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Subscribers.

Escalation response levels: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Subscriber on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

Support for hardware: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: Target Response Times

10. Subscriber Responsibilities: In order to efficiently resolve problems, it is important that there be clear and effective communications between Subscriber and Forcepoint. The first step of the process requires an accurate reporting of the problem by Subscriber. Subscriber will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Subscriber name

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29 Service levels are applicable for the software configurations described at Certified Product Matrix. Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.
• Subscription Key information
• Support PIN of the day for Subscriber’s Cloud security account
• Technical contact information including: name, telephone number and email address
• Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
• Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Subscriber should retain and use this case number in order to facilitate future communications regarding the matter.

In order to receive on-site parts replacement for a hardware Severity One problem, Subscriber must keep a current record with Forcepoint of the business location on record for the physical location of the hardware.\textsuperscript{30} Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

• Subscriber must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration\textsuperscript{31}
• Updates to a physical location must be completed prior to dispatching of authorized technicians
• Subscriber or Subscriber’s authorized representative must be available when the service technical arrives, or the service technician will not be able to service the hardware\textsuperscript{32}
• Missed service calls due to Subscriber’s unavailability may result in additional charges for the follow-up service call

be provided where:

• Hardware is repurposed or modified from its original configuration
• Hardware has missing or altered serial numbers or Service Tags
• Hardware has been serviced by someone other than a Forcepoint-authorized service provider
• Premium or Mission Critical Support subscription has expired

11. Technical Support Channels: There are two ways for Subscribers to engage support:

• Open a case online at: Support
• Open a case via telephone: Contact Support\textsuperscript{8}

12. Support Escalation Channels: If after following the procedures for creation of a technical support case Subscriber desires to escalate a support issue, the following escalation path to a Technical Support Manager in Subscriber’s region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

<table>
<thead>
<tr>
<th>Duty Manager Hotline</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Support Americas</td>
<td>1-858-458-2940</td>
</tr>
<tr>
<td>Technical Support EMEA</td>
<td>+44-203 02 444 01</td>
</tr>
<tr>
<td>Technical Support APAC</td>
<td></td>
</tr>
<tr>
<td>Australia/New Zealand:</td>
<td>+61 2 9414 0033</td>
</tr>
<tr>
<td>India:</td>
<td>+1-858-332-0061</td>
</tr>
<tr>
<td>China, Japan, SE Asia:</td>
<td>+86 (10) 5884-4200</td>
</tr>
</tbody>
</table>

Escalation contacts are available 24 hours a day, 7 days a week to service Subscriber’s Severity 1 business needs.

\textsuperscript{30} A service technician will only be dispatched after Forcepoint and Subscriber have concluded phone-based troubleshooting and determined that a Severity One problem exists.

\textsuperscript{31} Registrations may take up to 10 business days to complete.

\textsuperscript{32} In the event that Subscriber is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled.\textsuperscript{8} Toll-free numbers are provided for Subscribers of Premium and Mission Critical Support in some geographies.
1. **Terms and Conditions**

Forcepoint™ is a premier provider of SaaS security services. Forcepoint provides these SLAs in order to demonstrate its ongoing commitment to provide top-quality SaaS security service offerings for world class organizations and businesses.

1.1 Forcepoint provides these SLAs under the terms and conditions of the then current Forcepoint Subscription Agreement at Subscription Agreement. The defined terms therein shall have the same meaning when used in this SLA. The current version of these SLAs can be found at Forcepoint SaaS Security Service Level Agreement .

1.2 In order to receive a Service Credit under any of these SLAs, the Subscriber must make a credit request in writing within thirty (30) days of the occurrence of the breach in service levels (or earlier if specifically set forth below). The Subscriber must also promptly provide Forcepoint with evidence as reasonably requested by Forcepoint of the SLA violation subject to the Service Credit request. A “Service Credit” entitles the Subscriber to the free use of the affected SaaS security service for the time period set forth in the applicable SLA.

1.3 Credits for any Subscriber problems with Forcepoint SaaS Security services will be provided under a single SLA for a single claim, with the SLA that the claim is based upon determined by the Subscriber. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

- The SaaS Security service is unavailable for an hour or less, and the Subscriber fails to report the unavailability in writing to Forcepoint within five (5) days thereafter.
- The SaaS Security service is incorrectly configured by the Subscriber.
- The Subscriber provides incorrect configuration information to Forcepoint.
- Forcepoint is performing scheduled or routine maintenance of the SaaS Security service, where the Subscriber has been notified of the maintenance in advance.
- The Subscriber’s applications or equipment or Internet connection has failed.
- For SaaS Email Security, where an account is not configured to use two or more co-location sites (clusters).
- The Subscriber has acted as an open relay or open proxy, or has been using the service to send spam or viruses, or otherwise is using the SaaS Security service in violation of the Forcepoint Subscription Service Level Agreement .
- The Subscriber has used the SaaS Security service for thirty (30) days or less.
- The Subscriber is a trial or evaluation customer.
- The failure of the SLA is based on reasons beyond Forcepoint’s reasonable control as set out in the Forcepoint Subscription Agreement .
- The remedies set forth in these SLAs are the Subscriber’s sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Forcepoint Subscription Agreement .

2. **SLAs for SaaS Email Security**

2.1 **Message Tracking**

- For 99% of all emails processed, the following will be available for review in the Message Center within five (5) minutes of receipt of an email: Detailed SMTP logs and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).
- If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Subscriber is using the portal and following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day’s Service Credit for each email log or quarantined email that did not meet this service level, subject to a maximum credit of five (5) days in any one month.

2.2 **Service Availability**

- The SaaS Email Security service will be available 99.999% of the time.
- SaaS Email Security “Service Unavailability” means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint’s published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day’s Service Credit for each hour of Service Unavailability, subject to a maximum credit of five (5) days in any one month.

2.3 **Service Management**

- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than sixty (60) seconds.
- If in any one calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes sixty (60) seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day’s Service Credit for each email that takes sixty (60) seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of five (5) days in any one month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.

2.4 **Spam Detection Rates**

- Spam will be detected at a rate of 99% or above during each calendar month for Subscriber’s use of the antispam service.
- The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-European language) or emails sent to invalid mailboxes.
- In the event the spam detection rate drops below 99% for a period of more than five (5) days in any one calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one (1) month’s Service Credit.

2.5 **Virus Detection**

- For Subscribers subscribing to the anti-virus service, Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside email that has passed through the SaaS Email Security service. This excludes links (URLs) inside email messages that take the Subscriber to a website where Viruses can be downloaded...
- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint’s SaaS Email Security service, at least thirty (30) minutes before the time the email was processed by the SaaS Email Security service. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.
- In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected email. If such action prevents the infection of the Subscriber’s systems, then the remediation defined in this Section 2.5 shall not apply. Subscribers’ failure to promptly act on such information will also result in the remedy defined in this Section 2.5 being inapplicable.
· In the event that one or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Subscriber’s systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month’s Service Credit, subject to the Subscriber providing evidence acceptable to Forcepoint that the SaaS Email Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

· The Virus Detection SLA for SaaS Email Security will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Subscriber, or by the Subscriber through the email filtering portal, or (c) there is deliberate self-infection by the Subscriber or its authorized user.

3. SLAs for SaaS Web Security

3.1 Service Availability

· The SaaS Web Security service will be available 99.999% of the time.

· SaaS Web Security “Service Unavailability” means the SaaS Web Security service being unable to receive, process and forward Web Content in substantial conformance with Forcepoint’s published documentation as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.

· In the event of Service Unavailability for 0.001% or more of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will provide the Subscriber a credit of one day’s Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one calendar month.

3.2 Virus Detection

· Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside Web Content that has passed through the SaaS web protection service module of the SaaS Web Security service.

· A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint’s SaaS Web Security service, at least thirty (30) minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

· In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Subscriber’s systems, then the remedy defined in this Section 3.2 shall not apply. Subscriber’s failure to promptly act on such information will also result in the remedy defined in this Section 3.2 being inapplicable.

· In the event that one or more Known Viruses in any calendar month passes through the SaaS Web Security service undetected and infects the Subscriber’s systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month’s Service Credit, subject to the Subscriber providing evidence that the SaaS Web Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

· The Virus Detection SLA for web security will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Subscriber configured the service to not filter the web content, or (d) there is deliberate self-infection by the Subscriber or its authorized user.

4. SLAs for Email Archiving

4.1 Service Availability

· The SaaS email archiving service will be available 99.99% of the time over a calendar month.

· SaaS email archiving “Service Unavailability” means the inability of the email archiving server to receive and transmit Subscriber’s requests to store and retrieve archived email in conformance with Forcepoint’s published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.

· In the event of Service Unavailability for more than 0.01% for any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day’s Service Credit for each calendar month where Service Unavailability exceeds 0.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Fortinet, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3501 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 21.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

c) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

d) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

e) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

f) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

FORTINET, INC.

FORTINET, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. License Grant.

This is a license, not a sales agreement, between Ordering Activity and Contractor. The term “Software”, as used throughout this Attachment A, includes all Fortinet and third party firmware and software provided to Ordering Activity with, or incorporated into, Fortinet appliances and any stand-alone software provided to Ordering Activity by Contractor, with the exception of any open source software contained in Fortinet's Products which is discussed in detail in section 15 below, and the term “Software” includes any accompanying documentation, any updates and enhancements of the software or firmware provided to Ordering Activity by Contractor, at its option. Contractor grants to Ordering Activity a non-transferable (except as provided in section 5 (“Transfer”) and section 13 (“Open Source Software”) below), non-exclusive, revocable (in the event of your failure to comply with these terms
or in the event Contractor is not properly paid for the applicable Product) license to use the Software solely for Ordering Activity's internal business purposes (provided, if a substantial portion of Ordering Activity's business is to provide managed service provider services to Ordering Activity's end-customers, Ordering Activity may use the Software embedded in FortiGate and supporting hardware appliances to provide those services, subject to the other restrictions in this Attachment A), in accordance with the terms set forth in this Attachment A and subject to any further restrictions in Fortinet documentation, and solely on the Fortinet appliance, or, in the case of blades, CPUs or databases, on the single blade, CPU or database on which Fortinet installed the Software or, for stand-alone Software, solely on a single computer running a validly licensed copy of the operating system for which the Software was designed, or, in the case of blades, CPUs or databases, on a single blade, CPU or database. For clarity, notwithstanding anything to the contrary, all licenses of Software to be installed on blades, CPUs or databases are licensed on a per single blade, solely for one blade and not for multiple blades that may be installed in a chassis, per single CPU or per single database basis, as applicable. The Software is "in use" on any Fortinet appliances when it is loaded into temporary memory (i.e. RAM). Ordering Activity agrees that, except for the limited, specific license rights granted in this section 1, Ordering Activity receive no license rights to the Software.

2. Limitation on Use

Ordering Activity may not attempt to, and, if Ordering Activity is a corporation, Ordering Activity is responsible to prevent Ordering Activity's employees and contractors from attempting to, (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software; (b) rent or lease any rights in the Software in any form to any third party or make the Software available or accessible to third parties in any other manner; (c) except as provided in section 5, transfer assign or sublicense right to any other person or entity, or (d) remove any proprietary notice, labels, or marks on the Software, Products, and containers.

3. Proprietary Rights

All rights, title, interest, and all copyrights to the Software and any copy made thereof by Ordering Activity and to any Product remain with Fortinet. Ordering Activity acknowledges that no title to the intellectual property in the Software or other Products is transferred to Ordering Activity and Ordering Activity will not acquire any rights to the Software or other Products except for the specific license as expressly set forth in section 1 ("License Grant") above.

4. Limited Warranty

Contractor provides this limited warranty for its product only to the single Ordering Activity that originally purchased the Product from Contractor or its authorized reseller or distributor and paid for such Product. The warranty is only valid for Products which are registered on Fortinet's Support Website: https://support.fortinet.com; or on the TalkSwitch support website: http://global.talkswitch.com; or such other website as provided by Contractor. For the below software warranty to start, registration must take place within three hundred sixty-five (365) days from the date the Product was originally shipped from Contractor's facilities or the warranty is null and void and will not be honored. For the hardware warranty, such warranty starts on the earlier of the date of Product registration on Fortinet's Support Website or ninety (90) days from the date that the Product was originally shipped from Contractor's facilities. It is the Contractor distributor's and reseller's responsibility to make clear to the Ordering Activity the date the product was originally shipped from Contractor, and it is the Ordering Activity's responsibility to understand the original ship date from the party from which the end user purchased the product. All warranty claims must be submitted in writing to Contractor before the expiration of the warranty term or such claims are waived in full, i.e. ninety (90) days from the earlier of registration or the automatically started term for hardware and spare parts claims and three hundred sixty-five (365) days from registration within three hundred sixty-five (365) days from shipment for software claims. Contractor provides no warranty for any beta, donation or evaluation Products, for any spare parts not purchased directly from Contractor by the Ordering Activity, for any accessories, or for any stand-alone software.

Contractor warrants that the hardware portion of the Products, including spare parts unless noted otherwise ("Hardware") will be free from material defects in workmanship as compared to the functional specifications for the period set forth as follows and applicable to the Product type ("Hardware Warranty Period"): a three hundred sixty-five (365) day limited warranty for the Hardware excluding spare parts, and, for spare parts, solely a ninety (90) days limited warranty. Contractor's obligation shall be to repair or replace the defective Hardware at no charge to the original owner. This obligation is exclusive of transport fees, labor or installation costs, and any other cost which are not directly associated to the Product. Such repair or replacement will be rendered by Contractor through Fortinet at an authorized Fortinet service facility as determined by Fortinet. The replacement Hardware need not be new or of an identical make, model, or part; Contractor may, in its discretion, replace the defective Hardware (or any part thereof) with any reconditioned Product that Contractor reasonably determines is substantially equivalent (or superior) in all material respects to the defective Hardware. The Hardware Warranty Period for the replacement Hardware shall be for the greater of the remaining Hardware Warranty Period or ninety (90) days from the delivery of the repaired or replacement Hardware. If Contractor determines in its reasonable discretion that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, the price paid by the original purchaser for the defective Hardware will be refunded by Contractor upon return to Contractor of the defective Hardware. All Hardware (or part thereof) that is replaced by Contractor, or for which the purchase price is refunded, shall become the property of Contractor upon replacement or refund.

Contractor warrants that the software portion of Hardware Products will substantially conform to Contractor's then current functional specifications for the Software, as set forth in the applicable documentation for a period of ninety (90) days ("Software Warranty Period"), if the Software is properly installed on approved Hardware and operated as contemplated in its documentation. Contractor's obligation shall be to repair or replace the non-conforming Software with software that substantially conforms to Contractor's functional specifications. Except as otherwise agreed by Contractor in writing, the replacement Software is provided only to the original licensee, and is subject to the terms and conditions in this Attachment A of the license granted by Contractor for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any replacement software is delivered. If Contractor determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Contractor; provided that the non-conforming Software (and all copies thereof) is first returned to Contractor. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund. For purpose of the above hardware and software warranties, the term "functional specifications" means solely those specifications authorized and published by Contractor that expressly state in such specifications that they are the functional specifications referred to in this section 6 of this Attachment A, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.

5. Disclaimer of Other Warranties and Restrictions

EXCEPT FOR THE LIMITED WARRANTY SPECIFIED IN SECTION 4 ABOVE, THE PRODUCT AND SOFTWARE ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED IN ANY TERRITORY WHERE A PRODUCT IS SOLD, THE DURATION OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL SHIPMENT FROM CONTRACTOR. EXCEPT AS EXPRESSLY COVERED UNDER

The warranty in Section 4 above does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Contractor or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; and (d) is licensed for beta, evaluation, donation, testing or demonstration purposes or for which Contractor does not charge a purchase price or license fee. In the case of beta, testing, evaluation, donation or free Software or Product, the end user acknowledges and agrees that such Software or Product may contain bugs or errors and could cause system failures, data loss and other issues, and the Ordering Activity agrees that such Software or Product is provided "as-is" without any warranty whatsoever, and Contractor disclaims any warranty or liability whatsoever. An Ordering Activity's use of evaluation or beta Software or Product is limited to thirty (30) days from original shipment unless otherwise agreed in writing by Contractor.

The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms of this Attachment A and its successors.

7. Open Source Software.
Fortinet's products may include software modules that are licensed (or sublicensed) to the user under the GNU General Public License, Version 2, of June 1991 ("GPL") or GNU Lesser General Public License, Version 2.1, of February 1999 ("LGPL") or other open source software licenses which, among other rights, permit the user to use, copy, modify and redistribute modules, or portions thereof, and may also require attribution disclosures and access to the source code ("Open Source Software"). The GPL requires that for any Open Source Software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any Open Source Software covered under the GPL, the source code is made available on this CD or download package. If any Open Source Software licenses require that Contractor provide rights to use, copy or modify a Open Source Software program that are broader than the rights granted in this Attachment A, then such rights shall take precedence over the rights and restrictions herein. All open source software modules are licensed free of charge. There is no warranty for these modules, to the extent permitted by applicable law. The copyright holders provide these software modules "AS-IS" without warranty of any kind, either expressed or implied. In no event will the copyright holder for the open source software be liable to you for damages, including any special, incidental or consequential damages arising out of the use or inability to use the software modules, even if such holder has been advised of the possibility of such damages. A full copy of this license, including additional open source software license disclosures and third party license disclosures applicable to certain Fortinet products, may obtained by contacting Contractor through Fortinet's Legal Department at legal@fortinet.com.

EXHIBIT A – FORTICARE/FORTIGUARD SERVICES

DEFINITIONS

1. "Ordering Activity" means any person or entity that has purchased a Service Contract from Contractor.

2. "Defective Unit" means a Product purchased by the Ordering Activity which has ceased to operate in accordance with Fortinet's Product Documentation.

3. "Hardware" means the Fortinet computer peripheral devices excluding all Software incorporated in or bundled with such devices.

4. "No Trouble Found Unit(s)" means a Product that has been returned to Fortinet as a Defective Unit by the Ordering Activity, and is later discovered to be in proper working order.

5. "Product(s)" means any Fortinet Hardware with associated Software or stand-alone Software product which is/are available for sale.

6. "Registration Date" means the date when the Service Contract is registered via Fortinet's website: https://support.fortinet.com.

7. "Renewal Service Contract" means a Service Contract (FortiCare and/or FortiGuard), as identified in Contractor's then current GSA price list, which may be purchased for any hardware that has previously been registered with an accompanying Service Contract at Fortinet's Support site.

8. "Return Material Authorization" or "RMA" means the required number or code obtained from Fortinet prior to returning a Defective Unit for a Replacement Unit.

9. "Replacement Unit" means a Product shipped by Fortinet to replace an Ordering Activity reported Defective Unit for which the Ordering Activity has obtained an RMA.

10. "Service Contract" means the purchase order for the Services purchased by the Ordering Activity as evidenced by their Service Contract Registration Document.

11. "Service Plan Documentation" means the Fortinet issued collateral, product description, or documentation which outlines the Services to be performed by Fortinet.

12. "Service Contract Registration Document" means the electronic document emailed by Fortinet with a contract registration number to the email address provided for in the Order Documentation which contains the Ordering Activity's entitlements.
13. “Services” means any individual or combination of Support and/or Subscription services purchased by the Ordering Activity and evidenced in the Ordering Activity's Service Entitlement Document.

14. “Software” means the Fortinet computer software which is licensed in object code form, including any error corrections, updates and bug fixes provided by Fortinet.

15. “Subscription Services” means Fortinet's FortiGuard suite of services, per Fortinet's current Customer Support Services Reference Guide, which may include one or all of the following: Antivirus, Antispam, IPS, and Web Filtering.


SUPPORT AND SUBSCRIPTION SERVICE CONTRACTS OFFERED

1. Service Contracts Offered. Contractor through Fortinet offers various Support and Subscription Service Contracts ranging in hours of operation and included Services. In addition, Fortinet offers Subscription Services and other Product service offerings to protect Ordering Activity's newly purchased assets.

2. Ordering and Use. Each Service Contract purchased by Ordering Activity is valid for a single unit of Product. For clarity, use of a Service Contract with a replacement unit, or with certain upgraded units identified by Contractor through Fortinet as applicable to the Service Contract, shall not be considered a material breach of this Attachment A.

TERMS OF SERVICE

1. Registration. Ordering Activity must register the Product for which the Service Contract was purchased within three hundred sixty-five (365) days from the date of the original shipment by Contractor through Fortinet of the applicable Product and Service Contract to Ordering Activity. SERVICE CONTRACTS WHICH ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT WAS ORIGINALLY SHIPPED FROM CONTRACTOR THROUGH FORTINET SHALL BE FORFEITED AND CONTRACTOR SHALL HAVE NO OBLIGATION TO THE ORDERING ACTIVITY REGARDING THIS ATTACHMENT A OR ANY RELATED SUPPORT SERVICES. It is Ordering Activity's responsibility to ensure it knows the deadline to register the Service Contract within the three hundred sixty-five (365) day period. Notwithstanding anything to the contrary, Contractor through Fortinet may register any Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Ordering Activity authorizes Contractor through Fortinet to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.

2. Renewal Registration. In order to maintain a continual service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the "Renewal Service Contract Effective Date"). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract Effective Date will be the later of (a) the calendar day following the expiration date of the Ordering Activity’s previous Service Contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Ordering Activity’s previous Service Contract. In such case the start date shall be the date of registration.

For example and for illustration purposes only, in the event a one year Renewal Service Contract is registered ninety (90) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 275 days (365 – 90) from the date of registration of such Renewal Service Contract. As another example, in the event a one year Renewal Service Contract is registered two-hundred (200) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 180 days from the date of registration of such Renewal Service Contract.

3. Support Policy. The delivery of all Services shall be subject to and provided in accordance with Contractor through Fortinet's then current Customer Support Services Reference Guide (“Reference Guide”). The Reference Guide details the Service and Support process and any service levels provided by Contractor thorough Fortinet with your specific Fortinet Support Services. The Reference Guide is available at the following link https://support.fortinet.com/Login/UserLogin.aspx. The Reference Guide is subject to change and Fortinet shall post notices of any changes on the support website https://support.fortinet.com/Login/UserLogin.aspx with no less than thirty (30) days notice prior to the effective date of the change. The Ordering Activity hereby agrees and acknowledges that by continuing to accept Services beyond the effective date of the change as provide for in any notification, the Ordering Activity accepts and agrees the changes to the Reference Guide. Furthermore, the Ordering Activity hereby acknowledges and agrees that Ordering Activity is solely responsible for adhering to and monitoring Contractor through Fortinet's support website for updates and changes to the Reference Guide.

4. Product Life Cycle Policy. All Services provided hereunder are subject to Fortinet's Product Life Cycle Policy which is available Fortinet's Support website.

POINT OF CONTACT

Contractor through Fortinet may, at its option, provide the Services directly or indirectly, through any of its FortiPartner, agents, or sub-contractors.

DESCRIPTION OF PROGRAMS

1. Principle Period of Services. Services are provided during the hours described in the Reference Guide.

2. Telephone and Email Support. All telephone and email support will be delivered in accordance with any Service Plan Documentation and Fortinet's Support Policy.

3. Web-based Support. The Fortinet corporate website www.fortinet.com provides access to a variety of information including on-line documentation. To engage Customer Services and Support on an ongoing basis, an account must be created on the Fortinet support website.
### EXCLUSIONS

1. **General.** Ordering Activity acknowledges that software and/or hardware is/are neither perfect nor error-free and that, despite commercially reasonable efforts, Contractor through Fortinet may be unable to provide answers to, or be able to resolve, some or all requests for software or hardware support. The Services provided by Contractor through Fortinet hereunder do not include warranty, support and/or maintenance for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Fortinet. Contractor through Fortinet is not required to provide Services for problems arising from: (i) Ordering Activity's failure to implement all maintenance or features issued under this Attachment A; (ii) any alterations of or additions to the Products performed by parties other than Contractor through Fortinet; (iii) accident, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); or (iv) interconnection of the Products with other products not supplied by Contractor through Fortinet.

2. **On-Site Support Not Included.** Support Services are strictly limited to telephone and electronic support.

### LICENSE

All updates or upgrades to Software or Hardware provided for under this Attachment A shall be deemed to be included within the Products and subject to these Attachment A License terms and conditions. Further, Ordering Activity hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the Product or support updates or software, or any part thereof, or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (ii) not to remove any identification or notices of any copyright restrictions from any Product or support updates or software; (iii) not to copy the Product or support updates or software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (iv) to keep confidential any software and support updates and not share them with third parties.

### WARRANTY

Except as expressly stated otherwise, maintenance releases, updates and upgrades provided hereunder are warranted that only ordering technology personnel shall have access to the login and password information. Contractor through Fortinet shall use reasonable efforts to ensure web access is available on a 24x7x365 basis, but will not be responsible for internet downtime beyond its reasonable control.

4. **Hardware Support.** If the Customer's Service Contract includes hardware support, the Services shall be delivered as described in the applicable Service Plan Documentation and shall be provided in accordance with Fortinet's Support Policy. Please refer to Fortinet's Support Policy regarding the Hardware Support claim process. For Service Contracts containing Advanced Hardware repair or replacement, Contractor through Fortinet is not responsible for any delays in delivery related to export or customer regulations or processes. For any Service Contract which incorporates four-hour replacement Services, Ordering Activity acknowledges that Contractor through Fortinet shall have 30-days from the date of Product's Registration Date to stage replacement Product in a local depot ("Staging Period"). As such Ordering Activity's four-hour replacement Services shall not commence until the end of such Staging Period.

5. **Software/Firmware Updates.** If Ordering Activity's Service Contract includes software/firmware updates, all official software and firmware maintenance releases and feature updates shall be included in this Attachment A. Ordering Activity may access such updates via password-protected web access. Ordering Activity may install only one (1) copy of the upgrade per product covered by a Service Contract. Support shall be provided on the then-current major release of Product and the previous release of software. At Contractor through Fortinet's option, Fortinet may provide technical assistance on older versions of a registered Product, but such services may be limited and are not guaranteed. Support Services do not include education/training-related services or professional services such as installation or network configuration.

6. **Real-Time Updates.** If the Ordering Activity's Service Contract contains Subscription Services, the Ordering Activity will have access to Contractor through Fortinet's real-time Anti-Virus and Network Intrusion Detection System ("NIDS") updates that will protect the Ordering Activity against some of the latest network-based threats. These updates may either be pushed to properly configured and authorized Products, retrieved manually by the Ordering Activity.

**EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Fujitsu Network Communications, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal effect or force in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend a claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

FUJITSU NETWORK COMMUNICATIONS**

**FUJITSU NETWORK COMMUNICATIONS LICENSE, WARRANTY AND SUPPORT TERMS**

1. **Grant of License.** Upon delivery or access of the Licensed Product to Ordering Activity and payment by Ordering Activity of the applicable annual license fee for base software and individually licensed Software features or other consideration as determined by Contractor, Contractor grants to Ordering Activity a restricted, personal, nontransferable and non-exclusive right-to-use license to the Software that is embedded in, loaded, activated, or downloaded into applicable Fujitsu Network Communications (“FNC”) equipment and use of the Documentation, solely for Ordering Activity’s internal business purposes and only on or for the products Ordering Activity obtains from Contractor.

2. **U.S. Government Rights.** If the Licensed Products are being provided to the United States Government, they are, to the maximum extent permitted under applicable laws and regulations, provided pursuant to the terms, and subject to the limitations, of this Attachment A. At the extent that applicable laws and regulations grant the Government greater rights than provided by this Attachment A, then the Government receives only the minimum rights required by such laws and regulations. Development of the Licensed Products was privately funded and use, reproduction, or disclosure is subject to restrictions set forth in any of the following that are applicable: paragraph (c) of the Commercial Computer Software - Restricted Rights (June 1987) clause at FAR 52.227-19, the Restricted Rights Notice of subparagraph (g)(3) of the Rights in Data - General (June 1987) clause at FAR 52.227-14, DFARS 227.7202-3, and the Technical Data - Commercial Items (Nov. 1995) clause at DFARS 252.227-7015, all as may be amended from time to time.

3. **Restrictions.** Ordering Activity may not: (i) modify, adapt, translate, reverse engineer, disassemble, decode, or otherwise attempt to derive source code from or create or prepare derivative works of or from the Licensed Products, (ii) distribute, sublicense, rent, lease, loan, or make unauthorized copies of any portion of the Licensed Products, (iii) publicly display visual output or publish any test results of the Software, or (iv) use
the Software in inherently high-risk applications such as, but not limited to, aircraft navigation or communications, nuclear facilities, mass transit, or medical emergency communications. Ordering Activity is authorized to make one copy of the Software in any machine-readable medium for backup or archival purposes in support of Ordering Activity’s permitted use hereunder. Ordering Activity may not lend, sublicense, rent or lease the Software, or otherwise make it available to any third party, or transfer or assign this Attachment A or any rights hereunder. Any portion of the Software merged into another software program will continue to be subject to the terms and conditions of this Attachment A. The Software is licensed as a single product with individual Software license features, and it may not be separated for use other than as permitted above.

4. **SOFTWARE ACCESS.** Ordering Activity may obtain the Software by downloading a copy from the FNC website or a CD, or entering the applicable machine line code (“TL1 Command”) on equipment preloaded with the Software.

5. **Ownership of the Licensed Products.** The Licensed Products are licensed, not sold. Ordering Activity agrees that all right, title, and interest, including all copyright, patent, trademark, trade secret and other intellectual property rights in and to the Licensed Products and all complete or partial copies thereof belong exclusively to FNC or its licensors, and this Attachment A does not transfer or assign any such rights. The Licensed Products are protected by copyright and other laws and international treaties. Ordering Activity agrees to mark any copies of the Software with the applicable copyright notice provided by FNC. Except as expressly granted in this Attachment A, no right or license, whether express or implied, by estoppel or otherwise, is granted in any copyright, patent, trademark, trade secret, or other intellectual property of FNC or its licensors.

6. **Warranty Disclaimer and Limitation.** EXCEPT AS PROVIDED IN THE AGREEMENT BETWEEN CONTRACTOR AND ORDERING ACTIVITY, THE LICENSED PRODUCTS ARE LICENSED TO ORDERING ACTIVITY “AS IS”. CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, AND ANY WARRANTIES CLAIMED TO ARISE FROM PERFORMANCE OR CUSTOM OR USAGE OF TRADE WITH RESPECT TO THE LICENSED PRODUCTS. ORDERING ACTIVITY ASSUMES ALL RISK RELATING TO USE OF THE LICENSED PRODUCTS. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOST PROFITS, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF DATA, OR ANY OTHER LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached GitLab, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 522.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated
March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renews.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

l) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
GITLAB, INC.

1. LICENSE AND SUPPORT

1.1 Subject to the terms and conditions of this Agreement, GitLab hereby grants to Customer and its Affiliates (as defined below) a limited, non-exclusive, non-transferable, non-sublicensable license for Customer’s and its Affiliates’ employees and contractors to (1) internally (a) use, reproduce,
modify, prepare derivative works based upon, and display the code of GitLab Enterprise Edition at the tier level selected by Customer with the specifications generally promulgated by GitLab from time to time (the “Software”), excluding additional Products for the Enterprise Edition unless listed on the Quote, solely (i) for its internal use in connection with the development of Customer’s and/or its Affiliates’ own software, and (ii) by the number of internal users for which Customer has paid GitLab; and (b) use the documentation, training materials or other materials supplied by GitLab (the “Other GitLab Materials”); and (2) modify the Software and publish patches to the Software, solely by the number of internal users for which Customer has paid GitLab. Notwithstanding anything to the contrary, Customer agrees that GitLab and/or its licensors (as applicable) retain all right, title and interest in and to all Software incorporated in such modifications and/or patches, and all such Software may only be used, copied, modified, displayed, distributed, or otherwise exploited in full compliance with this Agreement, and with a valid GitLab Enterprise Edition subscription for the correct number of user seats. The Software and Other GitLab Materials are collectively referred to herein as the “Licensed Materials.” “Affiliate” means any entity(ies) controlling, controlled by, and/or under common control with a party hereto, where “control” means the ownership of more than 50% of the voting securities in such entity.

1.2 Subject to the terms hereof, GitLab will provide reasonable support to Customer for the Licensed Materials as set forth in the underlying GSA Schedule Contract. 1.2.1 GitLab will use reasonable commercial efforts to respond to support questions by phone or email during the next business day at the latest. The number of support questions is not limited.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Except as expressly authorized in Section 1.1, Customer will not, and will not permit any third party to: use the Licensed Materials for any purpose other than as specifically authorized in Section 1.1, or in such a manner that would enable any unlicensed person to access the Licensed Materials; use the Licensed Materials or any other GitLab software for timesharing or service bureau purposes or for any purpose other than its own internal use (including without limitation, sublicensing, distributing, selling, reselling any of the foregoing); except as expressly permitted herein; use the Licensed Materials in connection with any high risk or strict liability activity (including, without limitation, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital and medical operations or the like); use the Licensed Materials or software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any privacy laws, and laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation); or use the Licensed Materials in any manner that (1) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any user authentication or security process), (2) impersonates any person or entity, including without limitation any employee or representative of GitLab, or (3) contains a virus, Trojan horse, worm, time bomb, unsolicited bulk, commercial, or “spam” message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs).

2.2 Customer will cooperate with GitLab in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as GitLab may reasonably request. Customer will also cooperate with GitLab in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Licensed Materials. Customer shall maintain during the term of this Agreement and through the end of the third year after the date on which the final payment is made under this Agreement, books, records, contracts and accounts relating to the payments due GitLab under this Agreement (collectively, the “Customer Records”). GitLab may, at its sole expense, upon 30 days’ prior written notice to Customer and during Customer’s normal business hours and subject to industry-standard confidentiality obligations, hire an independent third party auditor to audit the Customer Records only to verify the amounts payable under this Agreement.

2.3 Customer will be responsible for maintaining the security of Customer’s account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer’s knowledge or consent.

3. CONFIDENTIALITY

3.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Without limiting the foregoing, the Licensed Materials are GitLab Proprietary Information.

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, GitLab may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Licensed Materials’ performance and Customer’s usage of the Licensed Materials; provided that GitLab will not identify Customer as the source of any such data without Customer’s prior written consent. However, courts of competent jurisdiction may require certain information to be released. Federal agencies are subject to the Freedom of Information Act (FOIA) (5USC 552), and some information may be released despite being characterized as confidential by GitLab.

3.3. Both parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

4. INTELLECTUAL PROPERTY RIGHTS
4.1 Except as expressly set forth herein, GitLab alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Licensed Materials and any suggestions, ideas, enhancement requests, feedback, code, recommendations or other information provided by or on behalf of Customer or any third party relating to the Licensed Materials, which are hereby assigned to GitLab. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Licensed Materials, or any intellectual property rights.

4.2 Customer shall not remove, alter or obscure any of GitLab’s (or its licensors’) copyright notices, proprietary legends, trademark or service mark attributions, patent markings or other indicia of GitLab’s (or its licensors’) ownership or contribution from the Licensed Materials. Additionally, Customer agrees to reproduce and include GitLab’s (and its licensors’) proprietary and copyright notices on any copies of the Licensed Materials, or on any portion thereof, including reproduction of the Licensed Materials (“Content”) and the intellectual property rights with respect to that Content. Subject to the foregoing, GitLab may participate in the defense and/or settlement of any applicable Claim with counsel of its choosing at its own expense to the extent permitted by 28 U.S.C. 516.

4.3 GitLab will defend, indemnify and hold Customer harmless from liability and other amounts paid or payable to unaffiliated third parties resulting from (i) the infringement or violation of any intellectual property or proprietary rights by the Licensed Materials or (ii) the violation of applicable law or regulation by GitLab in performance of its obligations hereunder, provided GitLab is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement thereof. Subject to the foregoing, Customer may participate in the defense and/or settlement of any claim that is indemnifiable by GitLab with counsel of its choosing at its own expense. The foregoing obligations do not apply with respect to portions or components of the Licensed Materials (i) not created by GitLab, (ii) that are modified after delivery by GitLab, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer’s use of the Licensed Materials is not strictly in accordance with this Agreement and all related documentation.

5. PAYMENT OF FEES

5.1 Unless and until GitLab and Customer have executed a quote document specifically referencing this Agreement with respect to amounts due on account of the Licensed Materials (a “Quote”, which is hereby incorporated by reference, if applicable), Customer will pay GitLab the applicable fees as set forth at https://about.gitlab.com/pricing/ (the “Pricing”) for the Licensed Materials selected and/or used by Customer (the “Fees”) without any right of set-off or deduction. To the extent applicable, Customer will pay GitLab for additional services, such as integration fees or other consulting fees agreed by both parties hereto in writing (email to suffice). On each anniversary of the Effective Date, GitLab will invoice Customer with respect to any and all additional Customer users of the Licensed Materials beyond those for whom Customer has pre-paid, as of such date (and for whom the Fees due pursuant to such invoice will be the per-year user fee set forth in the Quote or Pricing (as applicable) with respect to the year just ended, and the per-year user fee set forth in the Quote or Pricing (as applicable) with respect to all subsequent years, unless otherwise agreed in writing by both parties (collectively, a “True-Up”). For Customers that have pre-paid all Fees for multi-year subscriptions for Licensed Materials pursuant to a Quote, on each anniversary of the Effective Date during the term of this Agreement, (i) a new license key will be provided, and (ii) a True-Up will be conducted. All additional users purchased shall be coterminal through the end of the original Subscription period.

5.2 All payments and invoice terms will be made in accordance with FAR 52.212-4 and the underlying GSA Schedule Contract. Except as expressly set forth in this Agreement, all Fees paid and/or due hereunder (including any prepaid amounts) are non-refundable, including without limitation if this Agreement is terminated in accordance with Section 6 below. If Customer terminates this Agreement pursuant to Section 6.2 within 45 calendar days from receipt of the initial invoice for the Licensed Materials, GitLab will refund all Fees paid hereunder.

5.3 Payments not received when due shall be governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CCR 1315. Additionally, notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. GitLab shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6. TERMINATION

6.1 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this agreement must be made as a dispute under the Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Geotab shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

6.2 Customer’s rights to the Licensed Materials, and any licenses granted hereunder, shall terminate upon any termination of this Agreement. 7.

WARRANTY; CUSTOMER SOFTWARE SECURITY

GitLab represents and warrants that (i) it has all rights and licenses necessary for it to perform its obligations hereunder, and (ii) it will not knowingly include, in any GitLab software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, Trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, GitLab fails to comply with the warranty in this Section, Customer may promptly notify GitLab in writing of any such noncompliance. GitLab will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance.

8. WARRANTY DISCLAIMER
Gitlab warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. Except as just stated, THE LICENSED MATERIALS, SOFTWARE AND GITLAB PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. GITLAB HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR THEIR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, ANY DELAY OR INABILITY TO USE THE LICENSED MATERIALS OR ANYTHING PROVIDED OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOSS BUSINESS OR LOSS SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF EACH PARTY AND ITS LICENSORS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) ONE THOUSAND DOLLARS ($1,000), OR (ii) THE FEES PAID TO GITLAB HEREUNDER IN ONE YEAR PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Gitlab’s negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

10. U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Licensed Materials or any software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of the Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to any country as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the Treasury Department’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Licensed Materials is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by GitLab are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party without the other party’s prior written consent, not to be unreasonably withheld or delayed; provided that either party may transfer and/or assign this Agreement to a successor in the event of a sale of all or substantially all of its business or assets to which this Agreement relates. Both parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed or otherwise agreed to by each party, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. GitLab will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United States of America.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

4. **Scope.** This Rider and the attached Globalscape, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”).

5. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The Government Customer is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(f) and (m) and the Contract Disputes Act, subject to the following exceptions:

   - EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

   e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

   f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays (FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

   g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

   h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

   i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

   j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ’s jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

   k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

   l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

   m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.

   n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

r) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

6. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
GLOBAL SCAPE, INC.
time. If you wish to increase the number of users after your initial license purchase, upon issuing an order for the additional license fee, you will be issued a new registration serial number that will be used to activate the additional Workspaces licenses purchased and to re-activate the licenses previously purchased.

C. STANDBY OR DEVELOPMENT LICENSE. If you have purchased a license to use the Server Program and/or the Add-On on a non-production basis, then you may use the Server Program and/or Add-On so licensed only as follows:

(i) STANDBY LICENSE: One (1) copy on a standby computer that is not processing traffic or doing work of any kind except in the event that, and only for so long as, the primary production server upon which the Server Program license is associated is offline.

(ii) DEVELOPMENT LICENSE: One (1) copy on a server (and associated desktop personal computers) used solely for testing, evaluation, or API development, so long as such server does not process actual traffic in a production environment.

D. ACTIVATION. You must activate the evaluation or standard license for the Software by entering the evaluation or registration serial number as prompted by the Software and as otherwise instructed by GlobalSCAPE.

E. RESERVED.

3. RIGHT TO COPY OR BACKUP. You may make one copy of the Software or the installation media for the Software solely for back-up or archival purposes at no additional charge.

4. UPGRADES. To use Software identified as an upgrade, or new version, you must first be licensed for the Software identified by GlobalSCAPE as eligible for the upgrade and issue an order for the purchase of the upgrade or new version. After upgrading, you may no longer use the Software that formed the basis for your upgrade eligibility and the license for that Software shall be deemed immediately terminated upon your installation of the upgrade.

5. TRANSFER. You may use the Software solely for your internal business process as contemplated by this Agreement and shall not license, sublicense, sell, re-sell, rent, lease, lend, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than as contemplated by this Agreement, without the prior written consent of GlobalSCAPE. You shall not sell, sell access to, or sell use of the Software or utilize the Software as the basis for any software as a service or application service provider solution that You offer for sale or license to third parties. You shall not use the Software in connection with the provision of a service to any third party that includes file transfer or any other service that is a substitute for some or all of the Software’s functions without the prior written consent of GlobalSCAPE. If modifications are made to a SAT Module as permitted herein, such modification may only be used for your internal business purposes and may not be licensed or sublicensed or otherwise provided to any third party. You may, however, make a one-time permanent transfer of all of your license rights to the Software to another party, provided that: (a) the transfer must include all of the Software, including all component parts, programs, media, printed materials, all registration serial numbers, all modules you purchase in conjunction with the Software, and this license in connection with the sale of all or substantially all of the assets for that line of business; (b) you do not retain any copies of the Software, full or partial, including copies stored on a computer or other storage device; (c) the person to whom you transfer the Software agrees to be bound by the terms of this license; and (d) you provide notice to GlobalSCAPE at least 10 days prior to such transfer of the identity and contact information for the transferee and such transferee is not a competitor of GlobalSCAPE as determined by GlobalSCAPE in its sole discretion. If you purchased the license for the Software on a multi-computer basis—that is, one registration serial number valid for the number of computers indicated on your invoice, you may permanently assign your rights under this license to only a single person or entity. Notwithstanding anything else in this Agreement to the contrary, a license for the Software provided on a free, promotional, or “not-for-resale” (NFR) basis may be used only for testing, demonstration or evaluation and may not be sold or transferred to another person in any manner.

6. INFORMATION COLLECTION AND PRIVACY. The Software includes a feature that assigns a unique identifier to your computer based on system information. The Software reports this identifier to GlobalSCAPE either when you install the Software, enter your evaluation serial number, or enter your registration serial number, or upon the occurrence of each of these. During the evaluation period, the Software will contact our registration and activation servers periodically to verify that the Software is still eligible for use on an evaluation basis. The Software may also identify and report to us your Windows language identifier setting, IP address, and the date and time of installation and/or activation. GlobalSCAPE uses this information to count installations, detect piracy of the Software, and develop rough statistical data regarding the geographic location of the Software users. GlobalSCAPE may also use this information to personally identifiable information it has about you. GlobalSCAPE may use any non-proprietary information you provide as part of obtaining support services for GlobalSCAPE’s business purposes, including product support and development.

7. RESTRICTIONS. You may not reduce the Software to human readable (or source code) form, reverse engineer, de-compile, disassemble, merge, adapt, or modify the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You may not use the Software to perform any unauthorized transfer of information, such as copying or transferring a file in violation of a copyright, in violation of any laws related to the transfer of encrypted data or for any illegal purpose.

8. MAINTENANCE AND TECHNICAL SUPPORT SERVICES. If you purchased a maintenance and support plan (“M & S Plan”), GlobalSCAPE shall provide the support services at the level agreed by you and Contractor in an applicable ordering document and as defined in the GlobalSCAPE Maintenance and Support Guide (Exhibit 1) (the “Guide”). To be eligible for maintenance and support services, the Server Program and the Administrator Interface as well as all associated Add-On Modules must be covered by an active M & S Plan.

9. RESERVED.

10. SECURITY. The Software creates a means for others to gain access to your computer. Although we have taken commercially reasonable measures to prevent unauthorized persons from gaining access to your computer via the Software, we cannot foresee or control the actions of third parties. Therefore, use of the Software will make you vulnerable to security breaches that you might not otherwise face and could result in the loss of your privacy or property. You are responsible for your use of the Software or otherwise. Use of secure passwords and keeping passwords confidential are not the responsibility of GlobalSCAPE or the Software.

11. RESERVED.

12. RESERVED.
13. INTELLECTUAL PROPERTY. You acknowledge that you have only the limited, non-exclusive right to use and copy the Software as expressly stated in this Agreement and that GlobalSCAPE retains title to the Software and all other rights not expressly granted. You agree not to remove or modify any copyright, trademark, patent, or other proprietary notices that appear, on, in or with the Software. The Software and all derivatives thereof, including any modifications made to the SAT Module are protected by United States copyright, patent and trademark law and rights granted by international treaties related to intellectual property rights. The Software is copyright (c) 2004-2015 GlobalSCAPE, Inc. All rights reserved.

14. EXPORT RESTRICTIONS. THE SOFTWARE CONTAINS ENCRYPTION TECHNOLOGY THAT IS CONTROLLED FOR EXPORT BY THE U.S. GOVERNMENT. You agree to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that (i) the Software is not exported, directly or indirectly (including as a result of providing access to the Software to a national or resident of and embargoed or restricted country), in violation of Export Laws, or the applicable laws of any other jurisdiction or (ii) or provided to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Denial Orders or Entity List. Among other things, the Export Laws provide that the Software may not be exported or re-exported to certain countries that are embargoed or restricted, or to certain restricted persons. Embargoed and restricted countries currently include but are not limited to Cuba, Iran, Libya, North Korea, Syria and Sudan. In addition to other restrictions described in this section, you may not use the Software, or export the Software to any destination where you know or have reason to know that the Software may be used, in connection with the proliferation of nuclear, chemical or biological weapons or missiles.

15. WARRANTIES. THE WARRANTY IS LIMITED TO NINETY (90) DAYS FROM YOUR RECEIPT OF A COPY OF THE SOFTWARE. COMPUTER PROGRAMS ARE INHERENTLY COMPLEX, AND THE SOFTWARE MAY NOT BE FREE OF ERRORS. THE SOFTWARE IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. GLOBALSCAPE DISCLAIMS ALL LIABILITY FOR ANY ACTION THAT YOU, YOUR DESIGNEE, OR YOUR AGENTS MIGHT TAKE IN CONNECTION WITH, OR IN RELIANCE UPON, THE TRANSMISSION OR RECEIPT OF ANY MESSAGE USING THE SOFTWARE. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

16. RESERVED.

17. U.S. GOVERNMENT. The Software is commercial computer software developed solely at private expense. The rights of civilian and non-civilian agencies of the U.S. Government to use, disclose and reproduce the Software are governed by the terms of this Agreement. Publisher is GlobalSCAPE Inc., 4500 Lockhill-Selma, Suite 150, San Antonio, Texas, 78249, USA.

18. RESERVED. Exhibit 1 – Client Support Services Maintenance and Support Guide Meeting Client Needs
Our Client Support Services team is committed to helping you, our trusted partner, be successful! To this end, Globalscape offers world-class client support and product maintenance to help ensure that your Globalscape implementation is a success. We take pride in optimizing the business value of your security solution and realize that one size doesn’t always fit all. That’s why we’ve developed varying levels of technical support to ensure that you get the service your business deserves.

Online services include product updates, user guides, a knowledgebase, online help files, printable documentation, a user community discussion forum and more. In addition to our self-service resources that are available to all customers at the Globalscape website, we offer two Maintenance and Support plans: a Standard Plan and a Platinum Plan. Both plans include the same level of software maintenance protection. The Platinum Maintenance and Support plan provides you with emergency support anytime, 24 hours per day, seven days per week from your assigned support technicians. As part of this commitment, our maintenance and support program includes the following:

World Wide Web Support
Take advantage of the easy-to-use, 24-hour support resources that are available on the Globalscape Support Center Web site at http://support.globalscape.com. Online services include product updates/notifications, user’s guides, a knowledge base, online help files, printable documentation, a user community discussion forum and more.

Email Support
Submit your request via our online submission form available on the Globalscape Support Center Web site at http://www.globalscape.com/support/techsupport.aspx and receive an answer via email or telephone. Our response will include a ticket number and the name of the assigned support professional.

Telephone Support
Standard Support Plan members can call us at 1-210-366-3993, Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time) for help with any product-related issue.
Additionally, Platinum Support Plan members can receive emergency after-hours technical support 24 hours per day, seven days per week. After hours Platinum Support services are available only via a special telephone number that will be provided when you purchase a Platinum Support Plan.

Maintenance and Support Plans
Included with your active support plan is software maintenance, which provides all major upgrades and minor updates that are publicly released during the term of the agreement at no additional charge. Free upgrades must be requested or obtained while the maintenance and support plan remains in force.

Globalscape offers both Standard and Platinum Support plans for our enterprise software solutions. Both plans include the same level of software maintenance protection. A Platinum Maintenance and Support plan provides you with emergency access to our support professionals anytime, 24 hours per day, seven days per week.

Plan Details

<table>
<thead>
<tr>
<th>Plan Benefits</th>
<th>Standard Plan</th>
<th>Platinum Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority Telephone Support‡</td>
<td>Regular business hours</td>
<td>24/7*</td>
</tr>
<tr>
<td>Minimum Term</td>
<td>12 Months</td>
<td>12 Months</td>
</tr>
<tr>
<td>Priority Email Technical Support‡</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>
Access to the User Discussion Forum | Unlimited | Unlimited
Access to Online Self-Help Resources | Unlimited | Unlimited
Software Upgrades and Updates | Unlimited | Unlimited

†Email technical support is available through our online submission form.

Business Hours
Our regular business hours are Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time). Platinum support plan members can call the Platinum Support Line anytime, 24 hours per day, seven days per week*.

*Routine requests are handled during normal business hours. Priority service for production system emergencies is available at any time.

†Email technical support is available through our online submission form.

Contacting Technical Support

<table>
<thead>
<tr>
<th>Type of Contact</th>
<th>Address or Number</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Technical Support Line</td>
<td>1-210-366-3993</td>
<td>8:00am to 6:00pm M – F</td>
</tr>
<tr>
<td>Platinum Technical Support Line</td>
<td>(Provided with Platinum Plan)</td>
<td>Anytime</td>
</tr>
<tr>
<td>Priority Email Technical Support</td>
<td><a href="http://www.globalscape.com/support/technicalsupport.aspx">http://www.globalscape.com/support/technicalsupport.aspx</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>Online Support Center / Software Upgrades and Updates</td>
<td><a href="http://www.globalscape.com/support/">http://www.globalscape.com/support/</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>Serial Number Assistance</td>
<td><a href="http://www.globalscape.com/support/serial.aspx">http://www.globalscape.com/support/serial.aspx</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>Knowledge Base</td>
<td><a href="http://kb.globalscape.com">http://kb.globalscape.com</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>User Discussion Forum</td>
<td><a href="http://forums.globalscape.com">http://forums.globalscape.com</a></td>
<td>Anytime</td>
</tr>
</tbody>
</table>

Troubleshooting and Diagnostics

When contacting the Globalscape Technical Support team, it is important to provide as much detail as possible about the problem. Please gather as much diagnostic and logging information as possible to help us in our diagnosis of the issue. Be prepared to provide us with relevant error logs or messages including server log files, screen shots, and event log reports. At a minimum, please gather the following details. If you are submitting an inquiry via our online submission form, please provide these details with your submission:

- Your name and company name
- Your telephone number and email address
- The name of the program and complete version information (From Help > About)
- Product serial number (From Help > About or Platinum Support Plan membership card)
- Your operating system and specific version information
  - A complete description of the problem including:
  - All of the steps necessary to reproduce the problem
- A description of the environment and the network; useful information includes the data flow, Java runtime version, and database versions

Generally, service tickets are not closed until you and the Globalscape Support Professional both agree that the issue has been satisfactorily resolved. However, Globalscape support may close a service ticket if you have not provided requested information within a reasonable period.

Your Responsibilities

During the course of an issue’s diagnosis and resolution, we ask you to respond to all technical information requests as quickly as possible so that our Technical Support team can resolve your case in a timely manner.

<table>
<thead>
<tr>
<th>Level of Severity</th>
<th>After-hours Acknowledge-ment1</th>
<th>Target Initial 2 Response Time</th>
<th>Resolution3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production system outage</td>
<td>Standard Plan - Not Applicable</td>
<td>Standard Plan - Same Business Day</td>
<td>• Satisfactory workaround is provided</td>
</tr>
<tr>
<td>Product unusable, complete disruption of work, critical business impact. No workaround immediately available.</td>
<td>Platinum Plan - One Hour</td>
<td>Platinum Plan - Two Hours</td>
<td>• Product patch is provided</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Fix incorporated into future release</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Fix or workaround incorporated into knowledge base</td>
</tr>
</tbody>
</table>
Major feature or function failure
Operations are severely restricted, but a workaround is available.

<table>
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<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Platinum Plan - One Hour Hours</td>
<td>Platinum Plan - One Business Day</td>
</tr>
</tbody>
</table>

Minor feature or function failure. General usage questions.
Product not working as designed. Minor usage impact; acceptable workaround deployed. Documentation, general information, or enhancement requested.

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<tbody>
<tr>
<td>Platinum Plan - One Hour</td>
<td></td>
</tr>
</tbody>
</table>

1. After-Hours Acknowledgement: An initial call back to acknowledge our receipt of the issue and to determine the level of severity. The acknowledgement may be combined with the Initial Response.
2. Target Initial Response Time: Globalscape uses commercially reasonable efforts to respond within the target response time but cannot guarantee response times.
3. Resolution: A satisfactory resolution may not be immediately available or provided with the initial response, in which case Globalscape will use commercially reasonable means and effort to provide a resolution within a reasonable period.

Issue Escalation
Our support professionals follow predefined processes to gather information for identification and resolution of issues. For some issues, our support professionals may need to escalate the issue to software development in order to resolve it.

The escalation process allows for wider review of the issue, including technical and management directives for applying additional resources to the problem, and increased levels of communication between your organization and Globalscape.

If at any time you are not satisfied with the level of support that is being provided to you, we encourage you to bring this to the attention of Globalscape's management staff. Please contact one of the Globalscape Support managers listed below. At our discretion, we may assign an account manager, product manager, or problem resolution team to focus on your issue.

Director, EFT Product Support
Amit Patel
1-210-293-7909 apatel@globalscape.com

Senior Director, Client Support Services
Jason Reams
1-210-308-8267 jreams@globalscape.com

Scope of Technical Support
While we are happy to support your use of our products, and will help in overcoming any difficulties you may encounter, there are certain limitations to the technical support that we can provide. □ Technical Support is limited to the reporting and correction of product defects and installation and configuration assistance.
□ Technical Support does not include support for problems related to the failure of your system, network, or environment to comply with the system requirements for the software.
□ Technical Support does not include support for development or consulting issues such as COM or other programmatic development. This includes HTML development and custom script creation.
□ While we constantly strive to assist in any way we can, there can be situations that are outside our control. Technical support does not include support for any other issues not directly related to the workings of our software.
□ Technical support is offered for recent versions of Globalscape software only. Technical support for older versions is available only through our online self-help resources.
It is always recommended that you begin by examining the program help files, knowledgebase articles, and user forums if you are interested in customizing your environment or software beyond the availability of technical support options. You can also engage the services of our Professional Services team, described on our website at http://www.globalscape.com/services/pro-services.aspx.

Globalscape End of Life (EOL) and Support Life Policy
Rapidly changing technologies as well as competitive pressures influence the level, timing, and nature of demand for a particular product or group of products. These factors drive the need to introduce new products and services and to actively plan for end-of-life for older software versions as well as specific product lines. With that in mind, we have provided the Globalscape end-of-life (EOL) policy to help
customers better manage their end-of-life transition and to understand the role that Globalscape can play in helping to migrate to alternative Globalscape technologies. A copy of the policy can be provided upon request.

Support Agreement

The technical support services described in this Guide are provided pursuant to the terms of the License Agreement you entered into as a condition to the installation of the software indicated below.

Please complete the information below and fax or mail to:
GlobalSCAPE, Inc.
4500 Lockhill Selma Rd., Suite 150
San Antonio, Texas 78249-2073
Fax: 1-210-293-8003
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

7. **Scope.** This Rider and the attached Guidance Software ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

8. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The Government Customer is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referring termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

   EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

   e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

   f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

   g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

   h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

   i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

   j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ’s jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

   k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

   l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

   m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.

   n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

r) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

t) Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

GUIDANCE SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS:

1.1 “Attachment A” means these supplemental Guidance Software License and Maintenance Terms and Conditions.

1.2 “Concurrent User” means one (1) user running one (1) interactive or batch session of any Licensed Product (or one (1) of each of the Licensed Products in a licensed bundle listed on any purchase order, in any combination) on one (1) computer at one given moment.

1.3 “Concurrent Connection” means one (1) Concurrent User connected to one target computer for analysis during an interactive or batch session of any Licensed Product at one given moment. For any license that specifies the number of Concurrent Connections, the Licensed Product must be accessed only from within the site where it is installed.

1.4 “Ordering Activity” means the entity named on any applicable purchase order delivered to Contractor hereunder for the purchase of any particular Licensed Product.

1.5 “Effective Date” means the date that Ordering Activity’s applicable purchase order for the purchase of any particular Licensed Product is accepted by Contractor.

1.6 “Guidance” means Guidance Software, Inc.

1.7 “Licensed Product” means Guidance’s proprietary computer program(s) in object code form (including any accompanying Documentation, manuals, Upgrades, Releases, embedded third party computer program(s), databases, enhancements, and instructions, purchased by delivered to Customer and any copies thereof pursuant to this Attachment A. Licensed Product shall include, without limitation, the EnCase® Enterprise SAFE Server Software, any EnScript® programming language, the EnCase® Examiner Software and the node servlets. Licensed Product shall also include the accompanying computer disks, hardware security device and, if applicable, any hardware computer, hard drive or server delivered to Ordering Activity by Guidance.

1.8 “Standard Support Policy” means Guidance’s then-current Standard Support Policy which is described herein as Exhibit B.

1.9 “Supported Computer(s)” means one or more computers owned or leased by Ordering Activity, and under Ordering Activity’s control, of a manufacturer, model and operating system for which Guidance offers a current version of the Licensed Product. Subject to the restrictions set forth in this Attachment A, the Ordering Activity may at its sole discretion and expense transfer or move the Licensed Product from one Supported Computer to another Supported Computer at any time.

2. LICENSE GRANT:

2.1 General. Subject to the terms and conditions of this Attachment A, Contractor grants and Ordering Activity accepts a nonexclusive, non-sublicensable, non-transferable and perpetual copyright license during the term of this Attachment A, solely for Ordering Activity’s own internal business purposes, to execute one instance of the Licensed Product only on the Supported Computer(s) by employees of Ordering Activity (and/or consultants or contractors of Ordering Activity, provided such consultants or contractors have entered into confidentiality agreement with Ordering Activity containing terms no less restrictive than those set forth in Section 3, below, and provided that Ordering Activity remains responsible for any breach of this Attachment A by such consultants or contractors). The Licensed Product may not be used (i) on a service bureau or time-sharing basis; (ii) for consulting or managed security services provided to third parties; or (iii) in a for-hire engagement for revenue or other consideration on Supported Computer(s) or third party computers. Other than as explicitly set forth in this Attachment A, Ordering Activity shall not permit any use of the Licensed Product other than that set forth herein.

EC America, Inc.

https://www.immixgroup.com/contract-vehicles/gsa/lt-70/0511T/
other person or entity to access or use the Licensed Product. The computer program(s) are provided in and may be used in machine-readable object code form only.

2.2 Copies. The Ordering Activity may make one archival or back-up copy of the software licensed hereunder, provided that such copy is not used simultaneously or concurrently with the original software, and only if Contractor and Contractor's vendors' copyright and proprietary notices on the software are included on such copy.

2.3 Ordering Activity Modifications and Enhancements. Ordering Activity may not make any modifications or enhancements to the Licensed Product, create any derivative works of the Licensed Product, or merge or separate the Licensed Product or any component thereof without Contractor's prior written consent. Ordering Activity acknowledges the Licensed Product contains embedded software programs that Contractor distributes subject to a restricted license. Ordering Activity agrees not to use the embedded software programs except in conjunction with the Licensed Product. Ordering Activity agrees not to decompile, reverse compile, disassemble or otherwise engineer the Licensed Product, or permit, help, or encourage anyone to do so, in order to use the Licensed Software for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service or any other purpose that is to the Contractor's commercial disadvantage. Ordering Activity agrees not to run (or publish the results of) any benchmark tests on the Licensed Product without first obtaining Contractor's approval.

2.4 Proper Use of Licensed Product. The Ordering Activity acknowledges that the continued integrity of the Licensed Product and Contractor's performance of its obligations described in this Attachment A are dependent upon the proper use and maintenance of the Licensed Product by Ordering Activity. Proper use and maintenance means that Ordering Activity will (i) install all Upgrades and Releases delivered to Ordering Activity hereunder, (ii) use the Licensed Product in accordance with the documentation supplied by Contractor through Guidance and the terms and conditions of this Attachment A, and (iii) follow Guidance's instructions for installing new Releases and Upgrades and for correcting and circumventing software bugs.

3. OWNERSHIP AND PROPRIETARY RIGHTS: Title to, ownership of, and all rights in patents, copyrights, trade secrets, trade dress, and all other proprietary rights in all Licensed Product does not transfer to Ordering Activity and shall remain in Contractor and/or Contractor's third party vendors and licensors. In addition, Contractor may furnish Ordering Activity with its (or its third party vendor's or licensor's) proprietary or confidential information ("Confidential Information") in connection with the provision of Licensed Product and support. Ordering Activity shall protect such Confidential Information of Contractor to the same degree it protects its own Confidential Information, but with no less than a reasonable degree of care. Licensed Product licensed hereunder shall also be considered Confidential Information of Contractor and, except as specifically permitted herein, shall not be disclosed to any third party.

4. TRAINING:

Training. Provided that Ordering Activity has purchased Guidance Training Passports ("Passports") for training classes related to the Licensed Product on an applicable purchase order, such classes are subject to availability and must be reserved in advance. Ordering Activity acknowledges that certain classes have prerequisites. Each Passport permits Ordering Activity to send one (1) designated representative to an unlimited number of Guidance training classes given for one year commencing on the Effective Date. Ordering Activity must designate the representative to Contractor either on the applicable purchase order or otherwise in writing prior to reserving a course. No credit or refund will be given for any classes that are not taken and Ordering Activity shall be responsible for all travel and lodging expenses of its personnel to take such classes.

5. TERM OF LICENSES:

5.1 Term. The licenses granted hereunder commence on the Effective Date and remain in effect perpetually (or, if a shorter term is specified on any applicable quote/purchase order, for the length of such term). Upon expiration or termination of a license, Ordering Activity's right to use the Licensed Product licensed thereunder shall immediately end and Ordering Activity shall: (i) promptly return all Licensed Product (including any and all hardware dongles or other Guidance hardware on which the Licensed Product was delivered) and Guidance Confidential Information and all copies thereof to Guidance; (ii) erase all Licensed Product from the memory of its computer(s) and storage devices or render it non-readable; and (iii) upon Contractor through Guidance's request, certify in writing that Ordering Activity has satisfied its obligations hereunder.

6. SOFTWARE MAINTENANCE SERVICE ("SMS"):

6.1 General. If SMS is included or has been elected by Ordering Activity on an applicable purchase order, Contractor through Guidance will provide the services specified in this Section 5 and under Guidance's Standard Support Policy (Exhibit B herein), for the applicable Licensed Product. Guidance will evaluate problems submitted by Ordering Activity and consult with Ordering Activity to determine if it is a Defect.

6.2 Term. The initial SMS term shall commence on the Effective Date of the purchase order and remain in effect for the term purchased by Ordering Activity on any applicable purchase order. If one (1) year of SMS has been purchased, the SMS fee for that year is twenty percent (20%) of the license's single payment amount, and the term of SMS expires on the date one (1) year from the Effective Date. If two (2) years of SMS has been purchased, the SMS fee for that year is eighteen percent (18%) of the license's single payment amount, and the term of SMS expires on the date two (2) years from the Effective Date. If three (3) years of SMS have been purchased, the SMS fee for each year is sixteen percent (16%) of the license's single payment amount, payment for all three (3) years is due on the date specified in any applicable quote/purchase order, and the term of SMS expires on the date three (3) years from the Effective Date. Thereafter, subsequent SMS terms may be agreed upon by the parties, under the then-current Guidance SMS program, provided that: (a) Ordering Activity timely pays or has paid the applicable fees for any products or services from Contractor; (b) Contractor through Guidance continues to offer SMS to its customers generally for the Licensed Product, and (c) Ordering Activity remains in compliance with its obligations hereunder. Contractor through Guidance shall make commercially reasonable efforts to provide Ordering Activity with written notice of the fee for the next subsequent SMS term not less than sixty (60) days prior to the renewal date. Contractor may increase its SMS fees for subsequent SMS terms, but the amount of any such increase shall not exceed (i) if the immediately preceding SMS term was one (1) year, three percent (3%) of the fee applicable to the immediately preceding SMS term, (ii) if the immediately preceding SMS term was two (2) years, six percent (6%) of the fee applicable to the immediately preceding SMS term, or (iii) if the immediately preceding SMS term was three (3) years, nine percent
ENCASE® UNLIMITED COMPONENT LICENSES

EXHIBIT A

SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, OR INTERFERENCE FROM APPLICATIONS, DERIVATIVE WORKS, OR REQUIREMENTS. THE WARRANTY SET FORTH IN SECTION 6, ABOVE, WITHOUT INTERRUPTION OR DEFECT FREE, OR THAT THE LICENSED PRODUCT WILL MEET ORDERING ACTIVITY'S PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED PRODUCT IS IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.


"DOCUMENTATION" MEANS THE USER OR SYSTEM MANUALS AND OTHER PUBLISHED MATERIAL DELIVERED WITH THE LICENSED PRODUCT TO ORDERING ACTIVITY, WHICH INCLUDE THE SPECIFICATIONS. "SUITE" IS A COLLECTION OF MODULES. "MODULE" MEANS A VERSION OF THE LICENSED PRODUCT DESIGNED TO INCREASE FUNCTIONALITY FOR CERTAIN SPECIFIC TASKS OR TO SERVE THE REQUIREMENTS OF A SUBSET OF USERS, RATHER THAN BEING OF GENERAL APPPLICABILITY AND IS CONSIDERED OUTSIDE THE SCOPE OF THIS LICENSED PRODUCT LICENSED UNDER THIS AGREEMENT.

6.5 Scope of Services.

6.5.1 Contractor through Guidance shall provide SMS in a manner that is consistent with its Standard Support Policy, as described herein under Exhibit B.

6.5.2 Ordering Activity will receive any available Upgrades so long as Ordering Activity has paid for SMS. Contractor through Guidance will provide instructions and/or revised user Documentation to assist the transition in installing Upgrades.

6.5.3 Ordering Activity will receive any available Releases so long as Ordering Activity has paid for SMS. However, new products, Suites and Modules are not included without charge and will be available only for an additional fee.

6.6 Service Limitations. Contractor through Guidance will support only the current Release of the Licensed Product and the immediately preceding Release. Guidance shall make reasonable efforts to accommodate support questions for all other Releases. All associated computer hardware and operating system software must be maintained at the latest Release and Upgrade levels supported by Guidance. For support issues that are not Defects or, when Guidance determines that requested assistance has exceeded a reasonable level, Guidance may provide some reasonable assistance (determined in Guidance’s sole discretion) to help optimize or enhance Ordering Activity’s use of the Licensed Product.

7. WARRANTY: Contractor warrants, for period of one (1) year from the Effective Date ("Warranty Period"), that each item of Licensed Product shall be free from Defects. To the maximum extent permitted by applicable law, Ordering Activity's remedy and Contractor's obligation shall be to correct or circumvent any Defect reported to Contractor within the Warranty Period which causes and continues to cause a system-critical disruption of the Ordering Activity's business operations; provided, however, that: (i) Ordering Activity shall promptly notify Contractor of any Defects discovered and shall furnish to Contractor adequate supporting documentation and details to substantiate and to assist Contractor in the identification and detection of such Defect; and (ii) the Defect can be reproduced by Contractor on properly functioning equipment controlled by Contractor. In addition, with respect to certain hardware, to the extent the original equipment manufacturer offers its own hardware warranty, Contractor will pass-through such warranty to Ordering Activity.

8. EXCLUSION OF WARRANTIES: EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7, ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED PRODUCT IS WITHOUT INTERRUPTION OR DEFECT FREE, OR THAT THE LICENSED PRODUCT WILL MEET ORDERING ACTIVITY’S REQUIREMENTS. THE WARRANTY SET FORTH IN SECTION 6, ABOVE, IS CONTINGENT UPON (A) THE PROPER USE OF THE LICENSED PRODUCT IN ACCORDANCE WITH SECTION 2; AND (B) THE LICENSED PRODUCT NOT BEING SUBJECT TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, OR INTERFERENCE FROM APPLICATIONS, DERIVATIVE WORKS, OR CONFIGURATIONS PROVIDED BY THIRD PARTIES. THE WARRANTY SET FORTH IN SECTION 6, ABOVE, DOES NOT EXTEND TO DEFECTS IN THE LICENSED PRODUCT THAT RESULT FROM (A) ORDERING ACTIVITY’S FAILURE TO IMPLEMENT ALL UPGRADES AND RELEASES ISSUED BY CONTRACTOR DURING THE WARRANTY PERIOD, OR (B) TO THE EXTENT SUCH MODIFICATIONS WERE MADE BY ORDERING ACTIVITY TO ITS OPERATING ENVIRONMENT.

9. U.S. GOVERNMENT END-USERS: The Licensed Product and accompanying documentation are "Commercial Items" and "Commercial software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7203-3 (JUN 1995).

EXHIBIT A – ADDITIONAL SUPPLEMENTAL TERMS AND CONDITIONS

ENCASE® UNLIMITED COMPONENT LICENSES

1. Definition of Unlimited Component License. An EnCase Enterprise Unlimited Component License includes any EnCase Enterprise product shipping as of the date that such Unlimited Component License is purchased by a Ordering Activity, including an unlimited amount of the following components that can be deployed on Ordering Activity’s Sites/Supported Computers (as defined in the Standard Terms):

However, a Unlimited Component License does NOT include:

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<td>EnCase Cybersecurity</td>
<td>training, services</td>
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<tr>
<td>hardware</td>
<td>third party products</td>
<td>any other software or hardware that are not shipped with base purchases of EnCase Enterprise</td>
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2. Software Maintenance Services ("SMS"). For clarification, the EnCase Enterprise Unlimited Component License purchased by Ordering Activity represents an additional software license (and obligation to pay SMS for such Licensed Products) to those licenses already in place with Ordering Activity. For further clarification, SMS fees for the Licensed Products already licensed by Ordering Activity (i.e. not part of the Unlimited Component License) shall continue to apply in accordance with any agreement applicable to such License.

ENCASE® NODE-BASED LICENSES

1. Definition of Node. Ordering Activity acknowledges and agrees that pricing under this Attachment A is based on Ordering Activity’s representation of the number of Ordering Activity’s Supported Computers which can be both (i) connected to its internal network, and (ii) investigated using the Licensed Product purchased hereunder ("Nodes").

2. Node Restriction. Ordering Activity represents and warrants that the number of Nodes referenced on the Contractor Quote delivered to Ordering Activity or any applicable purchase order delivered by Ordering Activity to Contractor represents all of the Nodes on Ordering Activity’s computer networks, and all of the Nodes on the networks of Ordering Activity’s subsidiaries, parent companies, and affiliates. Ordering Activity agrees that the license granted under the Attachment A is restricted for use on the number of Nodes identified on the Contractor Quote delivered to Ordering Activity. Ordering Activity agrees to provide Node Confirmation Statement, to Contractor within 15 days of each anniversary of the Effective Date of Licensed Product purchase.

3. Annual Node Update or Confirmation. Within fifteen (15) days following each one-year anniversary of the Effective Date ("Anniversary Date"). Ordering Activity shall provide Contractor with one of the following documents:

3.1 Guidance Node Confirmation Statement, to confirm there is no change to the number of Nodes since the Effective Date or last Anniversary Date occurring after the Effective Date; or

3.2 A Guidance Node Update Statement, to account for any increase in the number of Nodes that are capable of being investigated by the Licensed Software Products.

ENCASE® CYBERSECURITY LICENSES

Remediation. As a condition to the license granted to Ordering Activity to use EnCase Cybersecurity pursuant to the Standard Terms, Ordering Activity acknowledges the Licensed Products contain remediation functionalities ("Remediation"), and agrees that the following clause forms an integral part of this Attachment A:

Ordering Activity acknowledges and agrees that the purpose of Remediation is to correct, remediate, delete or wipe data that has been identified as unauthorized, against policy, corrupt or possibly infected by certain computer viruses, contaminants, or disabling devices including, but not limited to, any back door, "time bomb", drop dead device, encrypted imbedded key, node lock, time out or other function, codes, commands or instructions that may have the effect or be used to access, alter, delete, damage or disable software and/or hardware on Ordering Activity’s computer network. It is possible and, indeed probable that utilizing Remediation will delete or destroy data that may otherwise be useful, valuable or important to Ordering Activity. Ordering Activity agrees that it is using Remediation at its own risk and that if it does not assume the risk of a loss of valuable electronic data, it should not use Remediation.

Notwithstanding anything to the contrary in the Attachment A, Contractor through Guidance hereby provides Remediation "AS IS" with all faults and without warranty or guarantee that it will be able to remediate any or all data problems, known or unknown. Ordering Activity hereby releases Contractor from any and all liability as to Ordering Activity or third party data, intellectual property, unauthorized content, privileged and/or confidential material that is destroyed in the process of using software that has Remediation activated.
EXTERNAL INVESTIGATION LICENSES

1. Use Restriction. Licensed Products licensed hereunder may be used by Ordering Activity, in its capacity as a Contractor authorized consultant and/or service provider, in accordance with these Standard Terms: (i) on external networks to analyze data collected from such networks in connection with criminal investigations, provided that all Licensed Products licensed hereunder are removed from external computer networks upon completion of external data collection work on such networks and/or for such client(s).

ENCASE® EDISCOVERY LICENSES

1. Definitions. The following defined terms used in this Exhibit of Attachment A have the following meanings:

   1.1 “Customer Data” means all electronic data or information submitted by Ordering Activity to the Service.

   1.2 “Ingestion” means the process of receiving Customer Data submitted by Ordering Activity and loading such Customer Data into the Service.

   1.3 “Order Forms” means any ordering document(s) (i.e. purchase orders or other similar documentation) setting forth the terms for purchasing Access to the Service entered into between Ordering Activity and Contractor.

   1.4 “Service” means the online, Web-based applications and platform provided by Contractor through Guidance via http://www.CaseCentral.com (the “Website”) and/or other designated by Guidance to Ordering Activity, that are ordered by Ordering Activity under an Order Form, including associated offline components but excluding third party applications.

   1.5 “Storage” means the data storage space on Guidance (or Guidance affiliate/partner) servers allocated to Ordering Activity for the storage of Customer Data uploaded to the Service by Users.

   1.6 “Term” is defined in Section 3.1 below.

   1.7 “Users” means individuals who are authorized by Ordering Activity to Access the Service and have been supplied user identifications and passwords for the Service. Users may include but are not limited to employees, consultants, contractors and agents of Ordering Activity, or third parties which Ordering Activity transacts business.

2. Service

   2.1 License to Access; Restrictions. Pursuant to this Exhibit of Attachment A and an applicable Order Form, Contractor through Guidance shall make the Service available to Ordering Activity for users to access and use (“Access”) the Service during the Term, for Ordering Activity’s internal business purposes only, via the Internet. Contractor through Guidance will host the Service and reserves the right to make changes and updates to the functionality and/or documentation of the Service from time to time. Ordering Activity may Access the Service until the Term expires or is terminated as provided herein. Ordering Activity agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Guidance regarding future functionality or features. The method and means of providing the Service, and Ordering Activity with Access to the Service, shall be under the exclusive control, management, and supervision of Guidance, giving due consideration to the requests of Ordering Activity. Ordering Activity may not alter, resell or sublicense the Service or provide it as a service bureau. Ordering Activity agrees not to reverse engineer the Service or its software or other technology. Ordering Activity will not use or access the Service to: (i) build a competitive product or service, (ii) make or have made a product using similar ideas, features, functions or graphics of the Service, (iii) make derivative works based upon the Service or the Web Site’s content, or (iv) copy any features, functions or graphics of the Service or Web Site. Ordering Activity will not “frame” or “mirror” the Service.

   2.2 User Accounts. The number of Users authorized to Access the Service shall be limited to the number of Users set forth on any applicable Order Form. User subscriptions are for designated Users and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing Access. Ordering Activity is responsible for all User actions in violation of these terms and any activities that occur under Ordering Activity’s User accounts. Ordering Activity is responsible for maintaining the security and confidentiality of all User usernames and passwords. Ordering Activity agrees to notify Guidance immediately of any unauthorized use of any Service username or password or account or any other known or suspected breach of the Service’s or Web Site’s security.

   2.3 Terms of Use; Compliance with Law. Guidance reserves the right to remove (but is not obligated to do so), and Ordering Activity and Users may not use the Service to store or transmit, any Customer Data that is infringing, libelous, or otherwise unlawful or tortious material, or any material in violation of third-party privacy rights. Ordering Activity and Users will comply with all applicable laws regarding Customer Data and use of the Service, including laws involving private data or data subject to export control.

   2.4 Ownership. These terms grant no ownership rights to Ordering Activity. No license is granted to Ordering Activity except as to Access of the Service as expressly stated herein. The Guidance name, any Guidance logos, and the product names associated with the Service are trademarks of Guidance or third parties, and they may not be used without Guidance’s prior written consent. Use, resale or exploitation of the Service and/or the Website except as expressly permitted in these Terms is strictly prohibited. Guidance shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Ordering Activity and/or Users, relating to the operation of the Service. Subject to the limited rights expressly granted hereunder, Guidance reserves all rights, title and interest in and to the Service and Website, including all related intellectual property rights. No rights are granted to Ordering Activity or Users hereunder other than as expressly set forth herein.

3. Term; Termination.
3.1 Term. Unless terminated in accordance with the terms of the Schedule Contract, the Service shall be provided by Contractor through Guidance commencing on the Effective Date and continuing for twelve (12) months thereafter (or any other period identified on an applicable Order Form)(the "Initial Term").

3.2 Termination.

3.3 Payments Upon Termination. Upon the expiration or termination of the Term for any reason, Ordering Activity shall pay to Contractor all undisputed amounts due and payable hereunder. Upon any termination for cause by Ordering Activity, Contractor shall refund any prepaid Fees covering the remainder of the Term of all subscriptions after the effective date of termination.

3.4 Return of Customer Data. In the event that the Term is terminated (for any reason) or expires, Contractor through Guidance will, within thirty (30) days of a Ordering Activity's request, make available one backup of the Customer Data in Guidance's standard format. Ordering Activity agrees and acknowledges that Contractor through Guidance has no obligation to retain and may delete all Customer Data that remains in Guidance’s possession or control more than 60 days after termination of the Term.

4. Service Level Agreement, Force Majeure.

4.1 SLA. During the Term, Contractor through Guidance shall provide the Service for not less than 99.0% of time during any particular calendar month subject to causes beyond Guidance’s reasonable control and scheduled maintenance. Guidance shall provide prompt maintenance and support seven days per week during regular business hours (9 AM to 9 PM Eastern Time), or within three (3) hours after notification during all other times and on U.S. holidays.

5. Customer Data; Data Security and Backup.

5.1 All Customer Data submitted by Ordering Activity to Contractor through Guidance, whether posted by Ordering Activity or by Users, must be submitted in a format satisfactory to Guidance and will remain the sole property of Customer or such Users to the full extent provided by law.

5.2 Ordering Activity will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data. Contractor through Guidance will not use the Customer Data for any purpose other than to provide the Service to Customer and for anonymous statistical reporting purposes. Guidance may aggregate anonymous statistical data regarding use and functioning of its system by its various Users. Such aggregated statistical data will be the sole property of Guidance.

5.3 Contractor through Guidance will use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use. Guidance shall backup all Customer Data at a secure facility operated in accordance with generally accepted industry standards.

6. Disclaimers; Warranties and Limitations

6.1 Warranties. Contractor warrants that the Service shall perform materially in accordance with these terms and the functionality of the Service will not be materially decreased during the Term. For any breach of either such warranty, Ordering Activity’s remedy shall be as provided in the “Payments Upon Termination” section above.

6.2 THE WARRANTIES EXPRESSLY STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CONTRACTOR. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICE AND WEB SITE ARE PROVIDED TO CUSTOMER ON AN “AS IS” AND “AS AVAILABLE” BASIS. ORDERING ACTIVITY ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER’S PURPOSES. CONTRACTOR DOES NOT WARRANT THAT USE OF THE SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED. CONTRACTOR IS NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY ORDERING ACTIVITY OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

EXHIBIT B - STANDARD SUPPORT POLICY FOR SOFTWARE MAINTENANCE SERVICES (“SMS”)

1. Definitions
"Defect" means a material error in program logic or documentation attributable to Guidance which prevents the performance of a principle computing function as set forth in Guidance’s published specifications for the Software. "Upgrade" means a revision of the Software with minor changes and/or Defect corrections (e.g. a change in the numbers to the right of the period X.XX). Upgrades generally occur between each Release of the Software. "Release" means a new version of the Software with new features and/or significant enhancements to existing Software products (e.g. a change to the numbers left of the period X.XX). "Documentation" means the user or system manuals and other published material delivered with the Software to Ordering Activity, which include the specifications. "Module" means a version of the Software designed to increase functionality for certain specific tasks or to serve the requirements of a subset of users, rather than being of general applicability and is considered outside the scope of this Software licensed under this Agreement.

2. Software Included in SMS
Ordering Activity will receive any available Upgrades so long as Ordering Activity has paid for SMS. Contractor through Guidance will provide instructions and/or revised user Documentation to assist the transition in installing Upgrades.

Ordering Activity will receive any available Releases so long as Ordering Activity has paid for SMS. However, new products or new Modules are not included.

3. Service Included in SMS
Contractor through Guidance will remedy Defects by using reasonable efforts to (i) provide a bug fix, patch or workaround procedure, and/or (ii) incorporate a permanent Defect correction in the next Upgrade or Release of the Software. If the problem is not a Defect, (a) Guidance will notify Ordering Activity as soon as possible and if determination of the problem cannot be made via phone, email or remote support; (b) Guidance may, in its sole discretion, provide a remedy by the same means as specified in Sections (i) and (ii) above.

4. SMS Service Limitations
Contractor through Guidance will support only the current Release of the Software and the immediately preceding Release. All associated computer hardware and operating system software must be maintained at the latest Release and Upgrade level for proper functioning. Guidance may provide some reasonable assistance (determined in Guidance’s sole discretion and subject to Ordering Activity’s acceptance) to help optimize or enhance Ordering Activity’s use of the Software.

5. Methods of Providing SMS and Response Times

Telephone, Web and Email Support

The Initial acknowledgement represents the maximum length of time allowed for the Support Consultants to acknowledge receipt of your support request, and route the request to the appropriate person for resolution. After Initial Acknowledgment of a Ordering Activity’s support request, Contractor through Guidance will make commercially reasonable attempts to remedy any reported Defects.

Web and E-mail Acknowledgement will include:

- Support Consultant’s name
- Incident ID number
- Status of the problem
- Indication of when you will receive a solution or update

The following table represents the maximum length of time allowed for initial acknowledgement to occur:

<table>
<thead>
<tr>
<th>Communication Type</th>
<th>Initial Acknowledgement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone</td>
<td>90% of Phone Calls during Business Hours will receive immediate voice contact with Support Consultants</td>
</tr>
<tr>
<td>Voice-mail</td>
<td>Ordering Activities who leave a voicemail for support professionals will receive a return call within (2) Business Hours</td>
</tr>
<tr>
<td>Web</td>
<td>Assigned to Support Consultant Within 2 Hours</td>
</tr>
<tr>
<td>E-mail</td>
<td>Assigned to Support Consultant Within 2 Hours</td>
</tr>
</tbody>
</table>

For purposes of this SMS Policy only, “Business Hours” shall mean the following Pacific Standard/Daylight Times: 24 hours a day, Sunday 7:00 p.m. through Friday 6:00 p.m. excluding national holidays in the United States and United Kingdom.

On-Line Support

Guidance’s On-Line Support Center provides the following capabilities:

Access via Web to Solutions Database
Receive Support e-Bulletins via E-mail
Critical Problem Alerts via E-mail
Report Product Defects via Web
Submit Suggestions via the Web
Access Product Documentation
On-Line Patches & Upgrades
Incident Submission via the Web
Incident Submission via E-mail

Guidance software products are managed according to a product life-cycle management program with planned and scheduled updates. Guidance SMS subscribers receive these software Updates and Releases at no charge and will receive notice of such improvements.

Emergency On-site Support

In the case of a critical situation, where an unresolved issue is having extreme impact on your business, emergency on-site assistance is available within 48 hours. You can specifically request on-site assistance, or Contractor through Guidance may determine the need as part of the escalation management process.

Escalation Procedure

If Ordering Activity reasonably believes that the reporting of a Defect has not received the appropriate response from Contractor through Guidance (as stated within this policy), the Ordering Activity may escalate the matter. The following Guidance personnel will be made aware of the matter and respond personally to Ordering Activity, in the following time frame:

- 48 Hours After Reporting Defect: GSI Technical Support Manager
- 96 Hours After Reporting Defect: GSI Vice President, Technical Support

120 Hours After Reporting Defect: GSI Vice President, Worldwide Sales
1. **Scope.** This Rider and the attached *Gupta Technologies* ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 2.121(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government, either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
i) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**GUPTA TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS**

1. **DEFINITIONS**

a) “Application Solution” defined as the Application Solution developed by Ordering Activity with the Software.

b) “Central Processing Unit (CPU)” defined as a computation hardware unit such as a microprocessor that serves as the main arithmetic and logic unit of the computer.
c.) “Developer Seat” defined as a single computer utilized by a single person at any one time to perform the tasks associated with the development of Application Solutions.

d.) “Deployment Software” defined as the Deployment Software specified in Exhibit A and licensed by payment of the proper License Fee.

e.) “Development Software” defined as the Development Software specified in Exhibit A and licensed by payment of the proper License Fee.

f.) “Services” defined as Unify provided Services for Support and Maintenance, Consulting and Training services.

g.) “Software” defined as the Development and Deployment Software, including User Documentation as defined in Exhibit A. Unify reserves the right to discontinue Software at its sole discretion. The Software is protected by applicable intellectual property laws including copyright laws and international treaties.

h.) “User Documentation” defined as the Unify user manual(s) and other materials on the proper installation and use of the Software, which is normally distributed with the Software.

2. LICENSE GRANT AND LIMITATIONS

2.1 License Grant. Pursuant to this Attachment A, Ordering Activity agrees to properly license and pay the appropriate License Fee for the Software (as set forth on Exhibit A and or the Contractor quote), and Contractor agrees to grant Ordering Activity a non-exclusive, non-transferable, non-assignable license to use the Development Software to design, develop, test and maintain the Application Solutions, and to use the Deployment Software to deploy the Application Solutions into a production environment subject to the conditions set forth in this Attachment A.

2.2 Limitations. All rights not expressly granted herein are reserved by Contractor and/or its licensors. Without limiting the generality of the preceding sentence, Ordering Activity agrees: (i) not to modify, port, translate, localize, or create derivative works of the Software; (ii) not to disassemble, decompile, reverse engineer or otherwise reduce the Software to human perceptible form, except as permitted by the 1991 EC Directive; (iii) not to remove, or allow to be removed, any Contractor or its Licensors copyright, trade secret, or other proprietary rights notice from any Software; (iv) not to make copies of the Software except for normal backup purposes; (v) not to transfer, assign, (except as permitted by Section 9.2) re-use or re-license the Software licenses to any third party without the prior written consent of Contractor; and (vi) not to use the Software to develop an Application Solution for re-sale or usage as an Application Service Provider or any other “access fee basis”.

3. GUPTA TECHNOLOGIES SERVICES

3.1 Ordering Activity will purchase Support and Maintenance Services for the first year from Contractor under the terms and conditions set forth in Exhibit B. All items (upgrades and updates) delivered by Contractor through Gupta Technologies shall be deemed to become a part of the applicable Software licensed hereunder and shall be subject to all terms and conditions of this Attachment A.

3.2 Ordering Activity may obtain Consulting Services from Contractor through Gupta Technologies under the terms and conditions as defined in Exhibit C. Ordering Activity may also participate in Gupta Technologies’s standard training programs by contacting info@GuptaTechnologies.com.

4. TITLE

4.1 Title, ownership and all intellectual property rights in and to the Software belong exclusively to Gupta Technologies and its licensors (which licensors shall have third party beneficiary rights to the extent permitted by applicable law). This Attachment A grants Ordering Activity no additional express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Software or take any action that would cause the Software to be placed in the public domain.

5. LIMITED WARRANTIES

5.1 Contractor warrants that (i) it has full right to enter into and perform this Attachment A; (ii) to the best of Contractor’s knowledge, the Software does not violate any intellectual property rights of a third party under applicable patent or copyright laws; (iii) during the first sixty (60) days of normal use from the date Ordering Activity receives the Software from Contractor, the media will be free of defects in materials and workmanship and the Software will perform substantially in accordance with the Documentation or Contractor will replace the defective media without charge if returned to Contractor during this period; and (iv) Contractor warrants that it will perform the work associated with the Services in accordance with professional standards for similar work.

5.2 EXCEPT FOR THESE EXPRESS LIMITED WARRANTIES, ORDERING ACTIVITY ACCEPTS THE SOFTWARE AND SERVICES "AS IS", WITH NO OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, OR IMPLIED BY STATUTE, COMMON LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor has no control over the conditions under which Ordering Activity uses the Software and does not and cannot warrant the results obtained by such use. Additionally, Contractor makes no warranties that the Software will satisfy Ordering Activity’s data processing needs or function without interruption, errors or defects. Contractor makes no warranties regarding the applications developed with the Software or regarding Software which has been modified or altered by any party other than Contractor or to any problems caused by computer hardware or operating systems. The parties further agree that Contractor shall not be liable to Ordering Activity for any delay or failure of Contractor to perform its obligations hereunder if such delay or failure arises from any cause beyond the reasonable control of Contractor, such as acts of God, delays or non-responsiveness of Ordering Activity, or the temporary unavailability of qualified personnel.

EXHIBIT A - Products licensed by this EULA

1. DEFINITIONS

a) “Developer Seat-based” is defined as requiring the Ordering Activity to purchase a license for each computer where the Software is installed and used by a Developer to develop the Application Solutions.
b) “CPU-based” is defined as requiring the Ordering Activity to purchase a license equal to or greater than the number of CPUs in the computer(s) where the deployed Application Solution, including the Software, is installed.

c) “User-based” is defined as any machine or device that executes, utilizes or displays the Software. User would include a server, client, or X-terminal as a hardware device or software emulator, batch processes, interactive users, and connecting devices.

2. SOFTWARE LICENSED:

<table>
<thead>
<tr>
<th>Product Licensed</th>
<th>License Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gupta Technologies Vision AppBuilder</td>
<td>1 User</td>
</tr>
<tr>
<td>Gupta Technologies Vision AppServer Desktop</td>
<td>1 User</td>
</tr>
<tr>
<td>Gupta Technologies Vision AppServer Enterprise</td>
<td>CPUs</td>
</tr>
</tbody>
</table>

EXHIBIT B - Software Support & Maintenance Services Terms and Conditions

Contractor through Gupta Technologies is pleased to provide the Annual Software Support and Maintenance Services (the “Support Services”) to Ordering Activity. Gupta Technologies has developed multiple Support Service offerings to meet the individual needs of each of our valued customers. Gupta Technologies agrees to provide the Support Services pursuant to the Attachment A terms and conditions and the additional Support Services terms and conditions below:

1. Annual Software Support and Maintenance Service Programs.

   1.1 Ordering Activity is required to purchase the first year of Support Services for the Software purchased.

   1.2 All updates, patches, fixes and other error corrections pertaining to the Software provided to Ordering Activity shall become a part of the Gupta Technologies Software, which is licensed under the terms and conditions of the Attachment A.

EXHIBIT C - Consulting Services Terms and Conditions

1. Consulting Agreement Terms and Conditions

   1.1 Pursuant to the Attachment A terms and conditions and the additional Consulting Services terms and conditions as follows, Contractor through Gupta Technologies agrees to provide, upon Ordering Activity’s request, the consulting services ("Assignments") described on separately executed assignment orders (the "Assignment Orders").

2. Assignment(s) Scope and Changes

   2.1 Each Assignment Order shall define a specific Assignment authorized by Ordering Activity, the Assignment schedule or term, the applicable rates and charges, and any other specific terms and conditions as required to complete the Assignment. Each Assignment Order shall be governed by the terms and conditions of this Exhibit C and only the terms or conditions set forth herein.

   2.2 Contractor through Gupta Technologies reserves the right to select and assign personnel to each Assignment based on the skill classifications required and available personnel resources. Should an employee be unable to perform the required services because of reasons beyond Gupta Technologies’s reasonable control, Gupta Technologies will replace such person within a reasonable period of time. Gupta Technologies shall have the right to use third parties in performance of its obligations and services hereunder and for purposes of this Consulting Agreement all references to Gupta Technologies or its employees shall be deemed to include such third parties. Gupta Technologies shall insure that all such third parties shall execute confidentiality agreements as may be necessary to comply with Gupta Technologies’s obligations or confidentiality under any confidentiality agreements between the parties.

3. Ownership

   3.1 All development tools, database management programs, programming languages, or programs provided by Contractor through Gupta Technologies which contain any of Gupta Technologies’s proprietary program code or related documentation (the “Gupta Technologies Software”) are not Works Made for Hire and shall belong exclusively to Gupta Technologies and no ownership rights thereto shall accrue in any manner to Ordering Activity. This Attachment A grants no express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Gupta Technologies Software or take any action that would cause the Gupta Technologies Software to be placed in the public domain. Ordering Activity shall not disassemble, decompile, reverse engineer or otherwise reduce the Gupta Technologies Software to human perceptible form.

   3.2 Except as provided in 3.1 above, Contractor through Gupta Technologies agrees that all work undertaken by Gupta Technologies under this Attachment A or any Assignment Order (in whole or in part, either alone or jointly with others) shall be the sole property of Ordering Activity. Ordering Activity shall be the sole owner of all rights in connection therewith. Furthermore, except as provided in section 3.1 above, all works of authorship will be “works made for hire” to the extent allowed by law. Ordering Activity acknowledges that during the term of this Attachment A Gupta Technologies will be acting as a consultant to other entities and, providing Gupta Technologies does not violate these terms and conditions, Ordering Activity shall have no rights in any such work provided by Gupta Technologies to such entities.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Haivision ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

u) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

v) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4 (f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

w) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

x) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

y) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

z) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefor. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

aa) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

bb) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

c) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

d) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

e) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
f) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

gg) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

hh) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

ii) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. The contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

jj) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components procured separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

kk) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

ll) **Advertisements and Endorsements.** Pursuant to GSAAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

mm) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

nn) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its own document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

oo) **Alternate Dispute Resolution.** The GSA Customer may not be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

pp) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

9. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**HAIVISION NETWORK VIDEO**

**HAIVISION NETWORK VIDEO LICENSE, WARRANTY AND SUPPORT TERMS**

1 **DEFINITIONS**

1.1. **Entitlement.** The collective set of applicable documents (e.g., warranty, support and maintenance documents, data sheets, etc.) authorized by Haivision Systems Inc. or its affiliate Haivision (collectively, “Haivision”) evidencing your obligation to pay associated fees (if any) for the license, associated Services, and the authorized scope of use of Product under the applicable Ordering Document.

1.2. **License Fee.** License Fee shall mean the consideration paid to Haivision for use of the Product. The License Fee is part or all of the price paid for the relevant Product in applicable Ordering Document.
1.3. Product. Product shall mean the executable version of Haivision’s computer software, program or code, in object code format (specifically excluding source code), together with any related material including, but not limited to the hardware, Reference Manuals or database schemas provided for use in connection with the Product and including, without limitation, all Upgrades through the date of installation.

1.4. Reference Manuals. Reference Manuals shall mean the most current version of the documentation for use in connection with the Product provided by Haivision to You.

1.5. Third Party Content. Services or materials, which are not proprietary to Haivision or may not be part of the materials of the company, entity or individual using the Product.

1.6. Updates. Updates shall mean any periodic software releases, additions, fixes, and enhancements thereto, release notes for the Product and related Reference Manuals, (other than those defined elsewhere in this section as Upgrades) which have no value apart from their operation as part of the Product and which add minor new functions to the Product, but none so significant as to warrant classification as an Upgrade, which may be provided by Haivision to fix critical or non-critical problems in the Product on a scheduled, general release basis. Updates to the Product (“Version”) are denoted by number changes to the right of the decimal point for a version and revision number (for example, going from 2.0.0 to 2.1.0).

1.7. Upgrades. Upgrades shall mean any modification to the Product made by Haivision, which are so significant, in Haivision’s sole discretion, as to warrant their exclusion when under the current license grant for the Product. Upgrades of Product are denoted by number changes to the left of the decimal point for a release number (for example, going from 2.0 to 3.0).

1.8. You (or Your). The ordering activity specified in the Entitlement, or for evaluation purposes, the entity performing the evaluation.

2 RIGHTS AND RESTRICTIONS

2.1. License to Use. Subject to the terms and conditions set forth herein and subject to the terms of the applicable Ordering Document, Haivision hereby grants to You a non-exclusive, personal, limited and non-transferable right and license to use the Product in accordance with the terms of this Agreement. This license is granted to You and not, by implication or otherwise, to any parent, subsidiary or affiliate of Yours without Haivision’s specific prior written consent. This license is for the limited use of the Product by You for the purpose of creating, managing, distributing and viewing IP Video assets. This license does not grant any license for content whatsoever. All rights not expressly granted to You by this Agreement are reserved by Haivision.

2.2. Restrictions.

(a) Reproduction. You shall not copy, modify, distribute, use or allow access to any of the Product, except as explicitly permitted under this Agreement and only in the quantities designated in the Entitlement. However, You have the right to make copies of the Product solely for archival purposes, but only in quantities necessary and typical for your Organization. You shall not modify, adapt, translate, export, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, hardware designs or other proprietary information from the Product or any internal data files generated by the Product, or use the Product embedded in any third party hardware or software. You shall also not use the Product in an attempt to, or in conjunction with, any device, program or service designed to circumvent technological measures employed to control access to, or the rights in other work protected by copyright laws. You shall not remove, modify, replace or obscure Haivision’s copyright and patent notices, trademarks or other proprietary rights notices affixed to or contained within any Product. No right is granted hereunder for any third party who obtains access to any Product through You to use the Product to perform services for third parties. Most sublicensing arrangements are prohibited under this Agreement.

(b) Ownership. The Product is conditionally licensed and not sold. As between the parties, Haivision and/or its licensors own and shall retain all right, title and interest in and to all of the Product, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein, and nothing in this Agreement shall be deemed to transfer to You any ownership or title to the Product. You agree that you will not remove, alter or otherwise obscure any proprietary rights notices appearing in the Product. All Haivision technical data and computer software is commercial in nature and developed solely at private expense.

3 RESERVED.

4 REPRESENTATIONS, DISCLAIMER

4.1. Limited Warranty. Haivision warrants that: (i) the Product will operate substantially in accordance with the Reference Manuals provided and (ii) any media on which the Product is provided will be free of material damage and defects in materials and workmanship under normal use for a term of ninety (90) days (the “Warranty Period”) after its delivery date. As Your sole and exclusive remedy for any breach of this warranty, Haivision will use its commercially reasonable efforts to correct any failure of the Product to operate substantially in accordance with the Reference Manuals which is not the result of any improper or unauthorized operation of the Product and that is timely reported by You to Haivision in writing within the Warranty Period, provided that in lieu of initiating commercially reasonable efforts to correct any such breach, Haivision may, in its absolute discretion, either: (i) replace the Product with other software or technology which substantially conforms to the Reference Manuals or (ii) refund to You a portion of the fee paid for the relevant license. This warranty shall immediately terminate this warranty shall immediately terminate this Agreement if You or any third party makes or attempts to make any modification of any kind whatsoever to the Product, engages in any improper or unauthorized operation of the Product, including uses prohibited by the Entitlement or installs or uses the Product on or in connection with any hardware or software not specified in the Entitlement or product data sheets.

4.2. Warranty Disclaimers. THE EXPRESS WARRANTIES SET FORTH IN SECTION 4.1 ABOVE IN RESPECT TO THE PRODUCT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING THE PRODUCT, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS (ALL OF WHICH ARE DISCLAIMED). HAIVISION DOES NOT WARRANT THAT ANY OF THE PRODUCT(S) WILL MEET ALL OF YOUR NEEDS OR REQUIREMENTS, OR THAT THE USE OF ANY OF THE PRODUCT(S) WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE DETECTED OR CORRECTED.

4.3. Reserved.

4.5. RESERVED.

6 OTHER PROVISIONS

6.1. Export and Other Restrictions. This Agreement, and all Your rights and Your obligations under this Agreement, are subject to all applicable U.S. Government laws and regulations relating to exports including, but not limited to, the U.S. Department of Commerce Export Administration Act and its associated Regulations and all administrative acts of the U.S. Government thereunder. In the event the Product or the Hardware is exported from the United States or re-exported from a foreign destination, You shall ensure that the distribution and export/re-export of the Product or the Hardware is in compliance with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Act and its associated Regulations. You agree that neither you nor any of your Affiliates will export/re-export any Product, any hardware on which the Product is loaded or embedded, technical data, process, or service, directly or indirectly, to any country for which the United States government (or any agency thereof) requires an export license, other government approvals, or letter of assurance, without first obtaining such license, approval or letter.

6.2. Content. Your data and/or your use of the Product may not: (i) interfere in any manner with the functionality or proper working of the Product; (ii) stream any material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless You are the owner of such rights or have permissions from the rightful owner to post the material; (iii) constitute, promote, facilitate or permit any illegal activities, including without limitation, activities that might be libelous or defamatory, invasive of privacy or publicity rights, abusive or
otherwise malicious or harmful to any person or entity; (iv) distribute, share or facilitate unauthorized data, malware, viruses, Trojan horses, spyware, worms or other malicious or harmful distributions; or (v) otherwise violate, misappropriate or infringe the intellectual property, privacy, publicity, contractual or other proprietary rights of any third party.

6.3. Consent to Use Data. You agree that Haivision may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to the Product. Haivision may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.

6.4. Reserved.
6.5. Reserved.
6.6. Reserved.

6.7. Third Party Content. Haivision is not responsible for examining or evaluating the data, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of any Third Party Content. Haivision does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any Third Party content.

6.8. Reserved.
6.9. Reserved.
6.10. Reserved.
6.11. Reserved.
6.12. Reserved.
6.13. Reserved.

6.15. US Government Rights. Some Products are commercial computer software, as such, term is defined in 48 C.F.R. §2.101. Accordingly, if You, as the Licensee, is the US Government or any contractor therefor, You shall receive only those rights with respect to the Product and Reference Materials as are granted to all other end users under license, in accordance with:

(a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors;

or

(b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

6.16. Reserved.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Hewlett Packard Enterprises ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately in its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Ordering Activity to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1. **Orders.** “Order” means the accepted order issued by Customer under the GSA Schedule Contract, including any HPE-branded supporting material which is identified as incorporated either by attachment or reference (“Supporting Material”). Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements and statements of work (SOWs), HPE Care Pack Support Service Agreement, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website, provided that in the event of inconsistency between the terms of any Supporting Material and the terms of the GSA Schedule Contract (including HPE’s GSA Addendum), the latter shall control to the extent of the inconsistency.

2. **Title.** When HPE delivers to Customer directly, risk of loss or damage and title for hardware products will pass upon delivery to Customer or its designee. Where permitted by law, HPE retains a security interest in products sold until full payment is received.

3. **Installation.** If HPE is providing installation with the product purchase, HPE’s site guidelines (available upon request) will describe Customer requirements. HPE will conduct its standard installation and test procedures to confirm completion.

4. **Support Services.** HPE’s support services will be described in the applicable Supporting Material, which will cover the description of HPE’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.

5. **Software-as-a-Service.** HPE’s online software-as-a-service solution that HPE provides to Customer, including support, and related professional services will be described in the Supporting Material (“SaaS”). The SaaS term is specified in the Supporting Material or HPE quotation (the “SaaS Term”). If Customer previously purchased a perpetual license to the on-premise version of the HPE branded software product (“HPE Software”), the price of SaaS shall reflect such purchase and such pre-existing license shall be deemed to be used in relation to SaaS. During the SaaS Term, Customer may not use such HPE Software installed on Customer infrastructure except in connection with receipt of SaaS.

6. **SaaS Rescheduling.** Customer has the one-time right to reschedule the Order start date without charge (for a date that is no more than three (3) months after the originally scheduled start date) upon no less than three (3) business days’ written notice prior to the date that delivery is scheduled to begin.

7. **Professional Services.** - Reserved

8. **Professional Services Acceptance.** Reserved

9. **Eligibility.** HPE’s service, support and warranty commitments do not cover claims resulting from:
   1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
   2. modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
   3. failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
   4. malware (e.g. virus, worm, etc.) not introduced by HPE; or
   5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE’s control.

10. **Dependencies.** HPE’s ability to deliver services will depend on Customer’s reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.

11. **Change Orders.** Reserved

12. **Product Performance.** All HPE-branded hardware products are covered by HPE’s limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third party supplier.

13. **Software Performance.** HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.

14. **Services Performance.** Services are performed using generally recognized commercial practices and standards.

15. **SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.

16. **Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.

17. **SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.

18. **Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period,
HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.

19. **Product Warranty Claims.** When we receive a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.

20. **Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

21. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under these Terms. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HPE and its designees to perform the ordered support services. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.

22. **Intellectual Property Rights Infringement.** For Federal government customers, the Government will control litigation or settlement of any patent infringement claims arising out of the performance of this contract and brought against the government notwithstanding anything to the contrary in a “Patent Indemnity” provision of this contract or other related transaction document. HPE reserves the right to intervene in the proceedings at its own expense through counsel of its choice.

23. **License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the HPE-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material.

24. **Updates.** Customer may order new software versions, releases or maintenance updates (“Updates”), if available, separately or through an HPE software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that HPE makes them available to Customer.

25. **License Restrictions.** HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer’s intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Customer under these Terms unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.

26. **License Term and Termination.** Unless otherwise specified, any license granted is perpetual in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to HPE, except that Customer may retain one copy for archival purposes only.

27. **License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-branded software licenses are generally transferable subject to HPE’s prior written authorization, and payment to HPE of any applicable fees. Upon such transfer, Customer’s rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.

28. **License Compliance.** HPE may audit Customer compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor’s costs being at HPE’s expense). If an audit reveals underpayments then Customer will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.

29. **Confidentiality.** Information exchanged under these Terms will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under these Terms, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

30. **Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information (“PII”) of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered. For SaaS purposes, Customer acknowledges that HPE may route, process or store, and could access business contact information and the data that Customer enters into HPE’s SaaS infrastructure, from countries other than the country from which Customer entered such data.
31. **US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE’s standard commercial license.

32. **Global Trade Compliance.** Products and services provided under these Terms are for Customer’s internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these Terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under these Terms to the extent required by laws applicable to either party.

33. **Limitation of Liability.** Reserved

34. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

35. **General.** These Terms represent our entire understanding with respect to its subject matter and supersede any previous communication or agreements that may exist. Modifications to these Terms will be made only through a written amendment signed by HPE and Customer.

**Aruba Networks, Inc. End-User Software License Agreement (“Agreement”)**

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLATION OR USE OF ANY SOFTWARE PROGRAMS FROM ARUBA NETWORKS, INC. AND ITS AFFILIATES OR AIRWAVE WIRELESS (COLLECTIVELY, “ARUBA”). INSTALLATION OR USE OF SUCH SOFTWARE PROGRAMS SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. YOUR RIGHTS UNDER THIS AGREEMENT BEGIN WHEN YOU RECEIVE YOUR LICENSE KEY FROM ARUBA, AND NOT ON THE DATE THAT YOU INSTALL THE SOFTWARE. IT IS UP TO YOU TO INSTALL THE SOFTWARE PROMPTLY UPON RECEIPT OF A LICENSE KEY FROM ARUBA. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ARUBA (OR IF YOU PURCHASED SUCH PRODUCTS FROM A RESELLER, THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS) AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED.

1. **LICENSE**

   Subject to your full compliance with all the terms and restrictions set forth in this agreement (“Agreement”), Aruba grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the Aruba software programs (“Programs”). Any third party software programs obtained through the use of the Programs are exclusively subject to the terms and conditions accompanying those third party programs (“Third Party Programs”). The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs (“Controls”). Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Aruba responsible for such usage of such Controls.

2. **PROPRIETARY RIGHTS**

   Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, “Support Enhancements”). Support Enhancements will be considered Programs for purposes of this Agreement, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, knowhow, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use

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(Except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

3. **RESTRICTIONS ON USE AND TRANSFER**

A. Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may only be run directly on Aruba’s hardware products or an Aruba-provided virtual machine, except that Programs specifically designed by Aruba to operate on third party hardware platforms may be run on such third party hardware platforms. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Aruba. You may physically transfer the base operating system Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Aruba, and (iv) you comply with all applicable laws including any import/export control regulations. Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

B. You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.
C. You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) to any third party without the express prior written consent of Aruba. You may not engage a third party to perform security testing on the Programs unless that third party enters into a written non-disclosure agreement directly with Aruba.

D. You understand and agree that some of the Programs are designed to automatically communicate certain network parameters and other information about the Programs and their performance back to Aruba. Aruba uses this information (a) to monitor the performance of the Programs; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with Aruba's legal obligations and to protect Aruba's legal rights. Aruba will not use any information gathered in this manner for any other purpose.

4. LIMITED WARRANTY AND DISCLAIMER

Aruba warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such media occurs during this 90-day period, the media may be returned to Aruba (or if you received such Programs from a reseller, to such reseller and Aruba, or to the reseller, as applicable, will replace the media without charge to you. Aruba shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

ALL THIRD PARTY PROGRAMS ARE PROVIDED AS-IS AND ARUBA EXPLICITLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR THE PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY PROGRAMS.

ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE.

EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

5. LIMITATION OF LIABILITY

YOUR EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF ARUBA AND ITS SUPPLIERS RELATED TO THE PROGRAMS SHALL BE EXPRESSLY LIMITED TO REPLACEMENT OF MEDIA AS PROVIDED ABOVE. IN NO EVENT WILL ARUBA OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. TERM

This Agreement is effective until terminated, and shall automatically apply to any future upgrades or updates to any Programs or any additional features of any Programs, except as otherwise specified by Aruba. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. This Agreement will terminate automatically, with respect to any Program or feature of any Program, at the end of the applicable term of any limited-term license purchased by you, or if you fail to comply with any term or condition of this Agreement, including any failure to pay any associated license and related fees due by you in full and any attempt to transfer a copy of the Programs to another party except as provided in this Agreement. You agree that upon such termination, you will destroy all copies of the Programs and related documentation.

7. U.S. GOVERNMENT

RESTRICTED RIGHTS

If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the Department of Defense or any related agency of service, the Programs are subject to "restricted rights" as that term is defined in Defense Federal Acquisition Regulations ("DFAR") in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered "restricted computer software" and the Government's rights in the Programs are set forth in the Federal Acquisition Regulations ("FAR") in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government.

8. GENERAL

You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Aruba and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. This Agreement may only be modified in writing. Any waivers and amendments of this Agreement or any of its terms shall be effective only if made by nonpreprinted agreements clearly understood by both parties to be an amendment or waiver. This Agreement shall be governed by and construed under the laws of the state of California, USA as if made and entered into in that state by two residents thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

If you are located in the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement must be resolved in Hong Kong by the Hong Kong International Arbitration Centre pursuant to its rules of arbitration then in effect, and the arbitration shall be conducted in English. If you are located outside of the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement shall be resolved by and you hereby consent to binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.

Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or
unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

IMPORTANT
IDAPTIVE END USER LICENSE AND SERVICES AGREEMENT

THIS END USER LICENSE AND SERVICES AGREEMENT (this "Agreement") constitutes a legal agreement between you, the undersigned Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity") and IDaptive, LLC, a Delaware limited liability company ("Idaptive"), with respect to the Cloud Service identified below. If Customer does not agree to the terms of this Agreement, Idaptive is unwilling to grant Customer any rights to use the Cloud Service. In such event, Customer may not use the Cloud Service, and Customer should promptly cease use of the Cloud Service and accompanying Documentation.

The terms and conditions set forth in this Agreement and in any Schedule issued under this Agreement shall control in the event that there are different, inconsistent or additional terms set forth in any other purchase order submitted by Customer or invoice issued by Idaptive. The terms and conditions of any Schedule shall incorporate the terms and conditions of this Agreement and shall have precedence over any conflicting terms and conditions contained in this Agreement. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

1. DEFINITIONS

1.1. "Affiliate" means any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party. Customer shall notify Idaptive in writing of the identity of its Affiliates and shall be jointly and severally liable for such Affiliate’s performance of its obligations under this Agreement.

1.2. "Claim" shall have the meaning given to such term in Section 5.1.

1.3. "Cloud Service" means any on-line software service operated by Idaptive and accessible to Customer via the internet, specified on a Schedule.

1.4. "Cloud Service Addendum" means the Cloud Service Addendum attached hereto as Exhibit A, initially as in effect on the Delivery Date and as such document may be modified from time to time thereafter in accordance with its terms.

1.5. "Compute Hour" means access to the Cloud Service for a period of one hour. Any partial hour will be rounded up to the next full hour.

1.6. "Confidential Information" shall have the meaning given to such term in Section 10.1.

1.7. "Consulting Fees" means the fees charged to Customer by Idaptive for Consulting Services.

1.8. "Consulting Materials" shall have the meaning given to such term in Section 3.1.

1.9. "Consulting Services" means installation, consulting, implementation or training services, if any, provided to Customer by Idaptive or its representative under this Agreement.

1.10. "Delivery Date" means the date on which the notification of the start of the Cloud Service ordered under a Schedule is electronically sent by Idaptive to Customer.

1.11. "Distributor" means any independent value added distributor (VAD) authorized by Idaptive to distribute Idaptive software and/or services to Resellers only, unless otherwise provided for in the applicable distribution agreement.

1.12. "Documentation" means Idaptive’s end user documentation made generally available by Idaptive for use with the Cloud Service, whether published on-line or provided in hard copy. Documentation shall include any revisions, enhancements and new versions of Documentation.

1.13. "Idaptive" means IDaptive, LLC, a Delaware limited liability company, or a subsidiary of IDaptive, LLC that provides the Cloud Service or Consulting Services to Customer under this Agreement, as the context requires.

1.14. "Jump Start Service" means a set of pre-packaged services offered by Idaptive that includes training, on-site fixed deliverables and travel costs for a fixed price. The details of these offerings will be provided in a Statement of Work, if applicable.

1.15. "Local Software Components" means the downloadable software components necessary to utilize certain functionality of the Cloud Service that Customer may install on devices such as phones, tablets, PCs or Macs and any revisions, enhancements and new versions of such software components, made generally available by Idaptive for use with the Cloud Service, in each case in its machine-readable object code form.

1.16. "Project Authorization" shall have the meaning given to such term in Section 3.1.

1.17. "Reseller" means any independent value added reseller (VAR) authorized by Idaptive to distribute Idaptive software and/or services to Customer.

1.18. "Schedule" means any addendum, exhibit, quote, schedule or Statement of Work to this Agreement in a form approved by Idaptive.

1.19. "Statement of Work" shall have the meaning given to such term in Section 3.1.
1.20. **Subscription Fee** means the fee charged to Customer by Idaptive for the Cloud Service (including Technical Support) either for the Subscription Term or for the number of Compute Hours purchased. If Customer purchases the Cloud Service from a Reseller, Customer may pay the Subscription Fee to the Reseller and not to Idaptive directly.

1.21. **Subscription Term** means the period during which Customer is subscribed to the Cloud Service as set forth on an applicable Schedule.

1.22. **Technical Support** means the services provided by Idaptive or its representative with each subscription at the level set forth on an applicable Schedule under the Idaptive Technical Support Policy posted at https://support.idaptive.com, as such document may be modified from time to time.

1.23. **Third Party Software** means any software that is not owned by Idaptive that is identified in the Documentation or on www.idaptive.com and related Idaptive websites and user portals.

1.24. **User** means an employee, contractor, client or customer of Customer to whom Customer provides access to the Cloud Service, the number or other limitations of which are set forth on an applicable Schedule.

1.25. **User Account** means electronic credentials a User uses to access to the Cloud Service.

2. **SUBSCRIPTION & LICENSE**

1. **Cloud Service.** Subject to the terms and conditions of this Agreement and the Cloud Service Addendum and Customer’s payment of the applicable Subscription Fee, Idaptive grants Customer a worldwide, non-exclusive, non-transferable right, without the right to sublicense and (except as otherwise provided on a Schedule) solely for its own business operations to use the Cloud Service to manage the number of devices for which Customer has subscribed, and have the number of Users for which Customer has subscribed use the Cloud Service in accordance with the terms of the Documentation and this Agreement. The term of such license shall be the Subscription Term or the number of Compute Hours purchased by Customer.

1.1. **SAP Online Marketplaces.** The terms of this paragraph shall apply to the Cloud Service purchased on SAP Online Marketplaces. Idaptive and Customer acknowledge that Idaptive is solely responsible for providing the Cloud Service and Technical Support services as set forth herein and SAP has no obligation to furnish any such services to Customer. To the maximum extent permitted by applicable law, SAP will have no warranty obligation to Customer with respect to the Cloud Service and any claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to the warranties set forth in this Agreement shall be Idaptive’s sole responsibility. Idaptive and Customer acknowledge that Idaptive, not SAP, is responsible for addressing any claims of Customer or any third party relating to the Cloud Service or Customer’s possession and/or use of the Cloud Service. In the event of any third party claim that the Cloud Service infringes the third party’s intellectual property rights, Idaptive and Customer acknowledge that Idaptive, not SAP, will be solely responsible for the investigation, defense, settlement and discharge of any such infringement claim subject to Section 5 of this Agreement.

1.2. **Local Software Components.** Subject to the terms and conditions of this Agreement and payment of the applicable Subscription Fee, Idaptive grants Customer a worldwide, non-exclusive, non-transferable license, without the right to sublicense and (except as otherwise provided on a Schedule) solely for its own business operations, to install on and use the Local Software Components to manage the number of devices for which Customer has subscribed, and have the number of Users for which Customer has subscriber use the Local Software Components in accordance with the terms of the Documentation and this Agreement. The term of such license shall be the Subscription Term or the number of Compute Hours purchased by Customer. Customer may reproduce the Local Software Components and Documentation only as necessary to use the Cloud Service. Customer shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original. Customer shall implement all commercially reasonable measures to ensure that its Users comply with the restrictions and limitations of this Agreement.

1.3. **Evaluation Use License.** In the event that the Cloud Service is licensed only for evaluation use, the terms of this paragraph shall apply. Idaptive hereby grants Customer a personal, non-exclusive, non-transferable license, without right of sublicense, to use the Cloud Service commencing upon initial use of the Cloud Service and, unless Customer and Idaptive agree to a different period, will terminate after a period of thirty (30) days (the "Evaluation Period"). Customer may use the Cloud Service for an unlimited number of Users and devices during the Evaluation Period. Cloud Service licensed for evaluation use will automatically disable itself at the end of the Evaluation Period, as it employs a restriction mechanism which restricts the program to a limited working period of time. This restriction mechanism and the manner in which it enforces the restriction is maintained in confidence by Idaptive as a trade secret, and Customer may not publish, disclose or reveal it. Customer agrees not to do anything to circumvent or defeat the restriction mechanism. Notwithstanding anything to the contrary in this Agreement, Sections 5 (Intellectual Property Indemnity), 7.1 (Cloud Service Warranty) and 7.2 (Consulting Services Warranty) shall not apply to evaluation use.

1.4. **Restrictions.** The rights granted in Section 2.1 through 2.3 are subject to the following restrictions: (i) Customer shall not reverse engineer, disassemble, decompile or otherwise attempt to derive or discover the source code of the Local Software Components or the Cloud Service, in whole or in part, except and only to the extent that it is expressly permitted by applicable
law notwithstanding this limitation; (ii) Customer shall not sublicense or use the Cloud Service for commercial time-sharing, rental, outsourcing, application or managed service provision, or service bureau use, or to train persons other than Users, unless previously agreed to in writing by Idaptive; (iii) Customer may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Cloud Service, Local Software Components or Documentation, (iv) Customer shall not disclose the results of any performance, functional or other evaluation or benchmarking of the Cloud Service to any third party without the prior written permission of Idaptive; (v) Customer may not use the Cloud Service if Customer is a competitor of Idaptive; (vi) Customer shall not modify or create any derivative works of the Cloud Service, Local Software Components or Documentation; and (vii) Customer shall not attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Cloud Service or the data contained therein. In the event that any Third Party Software is required for Customer's use of the Cloud Service, e.g., GoogleMaps for location services, Customer acknowledges that the terms of use applicable to such Third Party Software are different than those of this Agreement.

1.5. **Retention of Rights.** Idaptive reserves all rights not expressly granted to Customer in this Agreement. Without limiting the generality of the foregoing, Customer acknowledges and agrees (i) that Idaptive and its third party licensors retain all rights, title and interest in and to the Cloud Service, Local Software Components and Documentation and (ii) that it does not acquire any rights, express or implied, in or to the foregoing, except as specifically set forth in this Agreement. Any new features, functionality, corrections or enhancements for the Cloud Service or Local Software Components suggested by Customer shall be free from any confidentiality restrictions that might otherwise be imposed upon Idaptive pursuant to Section 10, and may be incorporated into the Cloud Service or Local Software Components by Idaptive. Customer acknowledges that the Cloud Service or Local Software Components incorporating any such new features, functionality, corrections or enhancements shall be the sole and exclusive property of Idaptive.

1.6. **Compute Hour Usage Certification.** The Cloud Service includes functionality that allows Customer to run a report to show the number of Compute Hours used by Customer during a specified period of time. If Customer has subscribed for Compute Hours, Customer will either permit the Cloud Service to automatically send a Compute Hour usage report or provide Idaptive with a Compute Hour usage report within fifteen (15) business days of the end of each calendar quarter. If the report reveals that Customer has used more Compute Hours than Customer has subscribed for, Idaptive shall invoice Customer for the excess Compute Hours used.

2. **CONSULTING SERVICES**

2.1. **Consulting Services.** From time to time, Customer may request, through provision of an executed project authorization in the form required by Idaptive, that Idaptive, or its duly authorized representative perform Consulting Services (a Government purchase order, “Statement of Work” or “Quotation” or, each and collectively, “Project Authorization”). Idaptive shall have no obligation to perform Consulting Services until and unless it accepts a Project Authorization. Customer shall be responsible for providing Idaptive’s representatives with access to qualified Customer employees and Customer-controlled software and hardware, and safe access to Customer’s premises, each as required to allow Idaptive to perform the Consulting Services. Idaptive’s representatives will comply with Government security requirements, including reasonable written rules and regulations of Customer with respect to Customer’s premises, provided that such rules and regulations are provided to Idaptive sufficiently in advance of the scheduled start date of the Consulting Services. All materials and information used or generated by Idaptive in the performance of Consulting Services (“Consulting Materials”), and all intellectual property rights therein, shall be the sole property of Idaptive. Idaptive grants to Customer a perpetual, worldwide, non-exclusive, non-transferable license, without the right to sublicense and solely for its own business operations, to use and have Users use the Consulting Materials provided to Customer under this Agreement, subject to all of the provisions of this Agreement governing Local Software Components and Documentation, as applicable, and any applicable Schedules. The rights to any of Customer’s preexisting proprietary business information, or results of any compilation thereof, which are used in or result from Consulting Services and Consulting Materials, shall remain the sole property of Customer.

3.2. **Cancellation.** In the event that Idaptive notifies Customer of Customer’s failure to perform any of its obligations under a Statement of Work, which failure shall have prevented Idaptive from meeting any deadline, such deadline shall be extended by an amount of time equal to the length of such failure to perform on the part of Customer. Idaptive shall have the right to charge Customer at Idaptive’s then applicable daily rates, in accordance with the GSA Schedule pricelist, to the extent that such delays cause Idaptive to provide additional services or to spend additional time on the project. In the case of extended delays as to which Customer provides reasonable advance written notice regarding the expected duration of the delay, Idaptive shall make a good faith effort to redeploy its resources to other projects to mitigate such additional charges. Idaptive shall have the right to rely upon all decisions and approvals of Customer’s contracting officer.

3. **TERM AND TERMINATION**

3.1. **Term.** The term of this Agreement shall commence on the Delivery Date and shall continue until terminated in accordance with the provisions of this Section 4. Upon expiration or termination of the then-current Subscription Term, Customer’s subscription may be renewed for an additional year by issuing a new purchase order.
3.2. Reserved.

3.3. Reserved.

3.4. Reserved.

3.5. **Effect of Termination.** Except as otherwise set forth herein, termination of this Agreement, any subscription, any Schedule or any Project Authorization shall not limit either party from pursuing other remedies available to it, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under any Schedule. The parties’ rights and obligations under Sections 2.5 (Restrictions), 2.6 (Retention of Rights), 2.7 (Compute Hour Usage Certification), 4.5 (Effect of Termination), 4.6 (Handling of Software and Confidential Information Upon Termination), 7.3 (Disclaimers), 10 (Nondisclosure) and 11 (Miscellaneous), as well as any obligation to pay fees accrued prior to termination, shall survive termination of this Agreement.

3.6. **Handling of Software and Confidential Information Upon Termination.** Upon termination of this Agreement, any subscription, any Schedule or any Project Authorization, Customer shall (i) cease using the applicable Cloud Service, Local Software Components and Documentation and related Confidential Information of Indaptive, and (ii) certify to Indaptive within thirty (30) days after termination that Customer has destroyed, or has returned to Indaptive, the Local Software Components, Documentation, related Confidential Information of Indaptive, and all copies thereof, whether or not modified or merged into other materials. Following termination of this Agreement, and subject to the Cloud Service Addendum, each party will return or destroy the other party’s Confidential Information and within thirty (30) days following the other party’s written request, the other party shall certify to the requesting party that it has destroyed or returned to the requesting party all Confidential Information of the requesting party, and all copies thereof, whether or not modified or merged into other materials.

4. **INTELLECTUAL PROPERTY INDEMNITY**

5.1. **Generally.** Indaptive will defend, indemnify and hold Customer harmless against any claim brought by a third party to the extent it alleges that the Cloud Service directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret, of that third party (“Claim”), and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Indaptive arising out of such Claim; provided that: (i) Customer gives Indaptive prompt written notice upon learning of a Claim or potential Claim; (ii) Indaptive may assume control of the defense of such Claim and all related settlement negotiations; and (iii) Customer reasonably cooperates with Indaptive, at Indaptive’s request and expense, in the defense or settlement of the Claim, including the provision of all assistance, information and authority reasonably requested by Indaptive. In no event shall Indaptive enter into any settlement or agree to any disposition, without the prior written consent of Customer, that contains an admission of liability or wrongdoing on the part of Customer, or otherwise prejudices the rights of Customer. Notwithstanding the foregoing, Indaptive shall have no liability for any claim of infringement based on (a) the modification of the Cloud Service by anyone other than Indaptive or its agents, (b) the use of the Cloud Service other than in accordance with the Documentation and this Agreement, (c) the combination of the Cloud Service with other software or hardware not provided by Indaptive, where the combination causes the infringement and not the Cloud Service standing alone, or (d) subscriptions for no fee, including a trial, beta or evaluation license agreement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

5.2. **Additional Remedies.** If the Cloud Service, or any material portion thereof, is held by a court of competent jurisdiction to infringe, or if Indaptive believes that the Cloud Service may be subject to a Claim or held to infringe, Indaptive shall in its commercially reasonable judgment and at its expense (a) replace or modify the Cloud Service so as to be non-infringing, provided that the replacement software or service contains substantially similar functionality; or (b) obtain for Customer the rights to continue using the Cloud Service; or (c) if non-infringing software or the rights to use the Cloud Service cannot be obtained upon commercially reasonable terms, terminate the then-current subscription. Upon any such termination of the then-current subscription, Indaptive shall refund any prepaid and unused amounts paid for the then-current subscription. This Section 5.2 shall not apply to subscriptions for no fee, including a trial, beta or evaluation license agreement.

5.3. **Exclusive Remedy.** This Section 5 sets forth Customer’s exclusive remedy, and Indaptive’s entire liability, with respect to infringement or misappropriation of intellectual property rights of any kind arising out of this Agreement.

6. **RESERVED**

7. **WARRANTIES AND REMEDIES**

7.1. **Cloud Service Warranty.** Indaptive warrants to Customer that, during the Subscription Term, the Cloud Service will perform in material conformity with the functions described in the applicable Documentation. Such warranty period shall not apply to subscriptions for no fee. Indaptive will use commercially reasonable efforts to remedy any material non-conformity with
respect to the Cloud Service at no additional charge to Customer. In the event Idaptive is unable to remedy the non-conformity and such non-conformity materially affects the functionality of the Cloud Service, Customer may promptly terminate the applicable subscription. In the event Customer terminates its subscription pursuant to this Section 7.1. Customer will receive a refund of any prepaid and unused portion of the Subscription Fee. The foregoing shall constitute the exclusive remedy of Customer, and Idaptive's entire liability, with respect to any breach of this Section 7.1.

7.2. Consulting Services Warranty. Idaptive warrants to Customer that the Consulting Services provided by Idaptive will be performed in a professional manner and in accordance with generally prevailing industry standards. Customer must give notice of any breach of this warranty within thirty (30) days from the date that the Consulting Services are completed, as provided in the Project Authorization applicable to the Consulting Services engagement. In such event, at Idaptive’s option, Idaptive shall (a) use commercially reasonable efforts to re-perform the Consulting Services in a manner that conforms to the warranty, or (b) refund to Customer the fees paid by Customer to Idaptive for the non-conforming Consulting Services. The foregoing shall constitute the exclusive remedy of Customer, and Idaptive’s entire liability, with respect to any breach of this Section 7.2.

7.3. Disclaimers. Idaptive does not warrant that (i) the Cloud Service will meet Customer’s requirements, (ii) the Cloud Service will operate in combination with other hardware, software, systems or data not provided by Idaptive (except as expressly specified in the Documentation), (iii) the operation of the Cloud Service will be secure, timely, uninterrupted or error-free, or (iv) all errors in the Cloud Service will be corrected. THE WARRANTIES STATED IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE.

8. RESERVED

9. RESERVED

10. NONDISCLOSURE

10.1. Confidential Information. Each party may have access to information of the other party that is confidential and/or proprietary (“Confidential Information”). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential (whether disclosed in writing, orally or by inspection of tangible objects). Idaptive’s Confidential Information shall include, but not be limited to, the Cloud Service, Local Software Components, Documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the results of any comparative or other benchmarking tests with respect to the Cloud Service, in each case regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential and oral information that is identified by either party as confidential.

10.2. Exceptions. A party’s Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party’s Confidential Information. In addition, Section 10 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; provided, however, that the responding party shall first have given notice to the other party to enable the disclosing party to seek a protective order or take other appropriate action.

10.3. Restrictions. Unless otherwise required by applicable law, the parties shall not make each other’s Confidential Information available in any form to any third party (except third parties who are Users) or use each other’s Confidential Information for any purpose other than as authorized under this Agreement. Each party shall take all commercially reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. The receiving party shall notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the receiving party, and will cooperate with the disclosing party in every reasonable way to help the disclosing party regain possession of the Confidential Information and prevent its further unauthorized use. Except as expressly stated in this Agreement, no license or intellectual property right to Confidential Information is granted due to the disclosure by either party to the other party, and each party retains ownership of its Confidential Information. The parties shall hold each other’s Confidential Information in confidence both during the term of this Agreement and for a period of five (5) years after any termination of this Agreement. Idaptive recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.
11. MISCELLANEOUS

11.1. Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the Federal laws of the United States, excluding its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement.

11.2. Notices. All notices required to be sent under this Agreement shall be in writing, signed by or on behalf of the party giving it, and shall be deemed to have been given upon (i) the date delivered by recognized overnight courier or by hand delivery or (ii) if by certified mail return receipt requested, on the date received, to the addresses set forth on a purchase order by Customer or invoice from Idaptive and to the attention of “Legal Department” and the signatories of the relevant Schedule, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

11.3. Assignment. Neither party shall sell, lease, assign or otherwise transfer this Agreement or any rights or obligations under this Agreement in whole or in part, and any such attempted assignment shall be void and of no effect without the advance written consent of the other party, such consent not to be unreasonably withheld or delayed; Any permitted assignee will assume all obligations and rights of its assignor under this Agreement (or related to the assigned portion in case of a partial assignment).

11.4. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

11.5. Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of Idaptive’s proprietary rights in the Cloud Service, Local Software Components or Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

11.6. Force Majeure. This Agreement is subject to FAR 52.212-4 (f) Excusable delays.

11.7. Successors and Assigns; Third Party Beneficiaries. All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Idaptive and Customer. Except as expressly provided in this Agreement, there are no third party beneficiaries of any of the warranties, rights or benefits of this Agreement.

11.8. Legal and Export Compliance. Customer shall comply fully with all international and U.S. laws and regulations that apply to the Cloud Service, Local Software Components and Documentation and to Customer’s use thereof, including but not limited to the U.S. Export Administration Regulations and other end-user, end-use and destination restrictions issued by U.S. and other governments. Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and its representatives shall not, directly or indirectly, export, re-export, divert, or transfer the Cloud Service, Local Software Components or Documentation or any direct product or portion thereof, including via remote access, (i) to any country or region so restricted by the U.S. economic sanctions or export controls, including but not limited to applicable regulations of the U.S. Commerce Department, the U.S. Treasury Department, and the U.S. Department of State, to any person or entity controlled by any such country or region, or to any national or resident of any such country or region, other than nationals who are lawfully admitted permanent residents of countries not subject to such restrictions, (ii) to any person or entity on the U.S. Treasury Department’s Specially Designated Nationals and Blocked Persons List, (iii) to any person or entity on the U.S. Commerce Department’s Denied Persons List, or (iv) to any person or entity to which sale is prohibited under the Enhanced Proliferation Control Initiative (“EPCI”). Idaptive shall be entitled to take all actions it deems necessary to ensure compliance with this Section, including but not limited to developing internal compliance practices such as performing checks and implementing use restrictions with respect to the Cloud Service, Local Software Components and Documentation. Customer agrees to the foregoing and represents that Customer is not located in, under the control of, a national or resident of any such country or region, on any such list, or subject to prohibition under EPCI.

11.9. U.S. Government License Rights. The Local Software Components and Documentation covered by this Subscription Agreement are “Commercial Item(s),” consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as these terms are defined in 48 C.F.R. §2.101 and used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212, if such Local Software Components or Documentation are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), such Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users for use by such government, or to any such US Government prime contractors or subcontractors for use by such prime contractors or subcontractors in the performance of work under a US Government prime contract or subcontract or for any other use, (a) only as Commercial Items and (b) with only those rights customarily provided to the public and as are granted to all other, non-government-related, end-users, as such commercial license rights are delineated in the terms and conditions of this Agreement. All rights relating to unpublished materials are hereby reserved under the copyright laws of the United States.
11.10. **Relationship Between the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between the parties.

11.11. **Entire Agreement.** This Agreement, together with the attached Cloud Service Addendum, the underlying GSA Schedule Contract, GSA Schedule Pricelist and any Schedule referring to this Agreement, each of which is incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such Cloud Service Addendum and Schedules.

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**Exhibit A – Cloud Service Addendum**

This Cloud Service Addendum (this “Addendum”) is an addendum to the End User License and Services Agreement (the “Agreement”) between Idaptive, LLC, (“Idaptive”) and the Customer as defined in the Agreement. Capitalized terms used in this Addendum and not otherwise defined below shall have the meanings given to such terms in the Agreement. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall control.

Customer and Idaptive hereby agree to the following:

1. **Idaptive Obligations**

   1.1. **Availability of Service.** Idaptive uses an industry-leading cloud service provider that provides a monthly uptime availability of at least 99.9% to host the Cloud Service. Idaptive will provide 99.9% availability for the Cloud Service during the cloud service provider’s service availability. Idaptive measures the availability of the Cloud Service, monthly. For purposes of the foregoing, “availability” means that the Cloud Service returned the correct, expected data when queried. Idaptive agrees to use its commercially reasonable efforts to make the Cloud Service generally available 99.9% of the time, 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Idaptive shall give at least two weeks online or e-mail notice to Customer and which Idaptive shall schedule to the extent reasonably practicable during the weekend hours from 11:00 p.m. PT Friday to 12:00 p.m. PT Sunday); or (b) any unavailability caused by circumstances beyond Idaptive’s reasonable control, including the force majeure provisions identified in Section 11.6 of the Agreement and computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Idaptive’s possession or control, and network intrusions or denial of service attacks. Service availability is documented monthly at www.idaptive.com/trust.

   1.2. **Security.** Idaptive shall maintain commercially reasonable administrative, physical and technical safeguards to maintain and protect Customer’s data that is submitted to the Cloud Service by Customer. Idaptive shall not be responsible for loss of data transmitted on networks not owned or operated by Idaptive, including the Internet. Idaptive shall produce an SSAE 16 (SOC 2) report (or similar alternative report as reasonably selected by Idaptive) on an annual basis, and Customer may request a copy of such report and agrees that such report shall be deemed Idaptive’s Confidential Information under the Agreement.

   1.3. **Ownership of Customer Data.** Except for software that Idaptive licenses to Customer, as between the parties, Customer retains all right, title, and interest in and to Customer Data, as defined in Section 2.4 of this Addendum. Idaptive acquires no rights in Customer Data other than the right to host Customer Data within the Cloud Service, including the right to use and reproduce Customer Data solely as necessary to provide the Cloud Service.

   1.4. **Use of Customer Data.** Idaptive will use Customer Data (other than in aggregate and anonymized form) only to provide Customer with the Cloud Service. This use may include troubleshooting to prevent, find, and fix problems with the operation of the Cloud Service. It may also include improving features for finding and protecting against threats to Users. Idaptive may share aggregated and anonymized Customer Data with business partners for use for their business purposes, but Idaptive de-identifies and aggregates such data so that the data cannot be traced to an individual, a customer, or a device. Idaptive will not use Customer Data or derive information from it for any advertising or other marketing purposes without Customer’s consent.

   1.5. **Third-party requests.** Idaptive will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant, but excluding Idaptive’s subcontractors) except as Customer directs or unless required by law. Should a third party contact Idaptive with a demand for Customer Data, Idaptive will attempt to redirect the third party to request that data directly from Customer. As part of this effort, Idaptive may provide Customer's basic contact information to the third party. If compelled to disclose Customer Data to a third party, Idaptive will promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so. Customer is responsible for responding to requests by third parties regarding Customer’s use of the Cloud Service, such as requests to take down content under the Digital Millennium Copyright Act.

2. **Customer Obligations**
2.1. **Internet Access.** Customer must have a high speed Internet connection in order to use the Cloud Service. Customer shall procure and maintain the hardware, software and systems that connect Customer’s network to the Cloud Service, and shall implement all reasonable communication and security protocols necessary to use the Cloud Service.

2.2. **Customer Information.** Customer shall provide and maintain with Idaptive accurate and complete information on Customer’s legal business name, address, phone number, email address(es) and other information reasonably requested by Idaptive. Customer agrees that Idaptive may provide any and all communications, reports, statements and notices (other than legal notices under the Agreement) to such email address(es), and may rely on any communications, directions or statements received from such email address(es).

2.3. **Security.** Customer shall maintain commercially reasonable administrative, physical and technical safeguards to prevent unauthorized access to or use of the Cloud Service. Customer is responsible for all activity occurring under its User Accounts, including, but not limited to those that access the Cloud Service, www.idaptive.com and related Idaptive websites and user portals, and for abiding by all applicable local, national and international laws. Customer shall promptly notify Idaptive of any unauthorized access to or use of the Cloud Service and any loss or theft of any User’s username or password of which Customer becomes aware.

2.4. **Customer Data.** Customer is responsible for the legality, quality, accuracy and integrity of any data and other information that Customer submits to Idaptive in the course of using the Cloud Service (“Customer Data”). Idaptive will not be responsible for any corrections, deletions or damage to Customer Data. Customer Data may include documents, images and other digital information that Customer chooses to transmit to and store in the Cloud Service. Customer is solely responsible for ensuring that Customer Data is not offensive, obscene, inappropriate or unlawful and that it does not contain any viruses or harmful content. Any Customer Data that Idaptive determines, in its sole discretion, may be offensive, obscene, inappropriate or unlawful or that may contain viruses or harmful content may be removed from the Cloud Service.

3. **Changes**

3.1. **Changes to the Cloud Service.** Idaptive may make changes to the functionality, user interface, usability of the Cloud Service and related Documentation from time to time. In the event of any material change to the functionality, user interface, usability of the Cloud Service, as Customer’s sole remedy in the event of such change, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of fees paid by Customer for the Cloud Service for the terminated portion of the term.

3.2. **Changes to this Addendum.** Idaptive may make changes to this Addendum from time to time, but will not reduce the level of service for which Customer has paid. In the event of any material change to this Addendum, Idaptive will notify Customer by either sending an email to the email address(es) provided by Customer pursuant to this Addendum, or will post a notice in Customer’s administrator’s account. If Customer does not agree to such change, Customer must notify Idaptive within thirty (30) days of Customer’s receipt of such change, in which case the change will not take effect until the end of the then current Subscription Term.

4. **Suspension and Termination**

4.1. **Reserved.**

4.2. **Suspension for Inappropriate Use.** Idaptive reserves the right to temporarily suspend Customer’s access of the Cloud Service if Idaptive determines that Customer’s use is contrary to law or causing material harm to Idaptive or others. Idaptive will provide reasonable notice of such suspension. Customer agrees that Idaptive will not be liable to Customer, any Affiliate or any third party for any temporary suspension under this Section.

4.3. **Handling of Data on Termination.** In the event of any expiration or termination of Customer’s use of the Cloud Service, upon Customer’s request, Idaptive will export Customer’s data that is stored on the Cloud Service to a mobile storage medium and will return such data to Customer. Alternatively, Customer may request that Idaptive delete all such data. Idaptive may delete all of Customer’s data that is stored on the Cloud Service thirty (30) days following any expiration or termination of Customer’s use of the Cloud Service. Customer agrees that Idaptive will not be liable to Customer, any Affiliate or any third party for any data deleted under this Section 4.3.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached HireVue, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

c) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Government to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

10. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

HIREVUE, INC.
1. Definitions.

1.1. “Authorized Users” means those individuals designated by or invited by Buyer, in accordance with this agreement, to use the Services.

1.2. “Buyer Content” means all content created by or provided by Buyer or its Authorized Users and submitted to the Platform.


1.4. “End User” means a user of the Platform that responds to requests from Buyer or its Authorized Users through the Platform.

1.5. “Platform” means the HireVue team acceleration platform including any related mobile applications, used to deliver the Services, features and functionality described in the Documentation.

1.6. “Responses” means all responses to Buyer Content submitted to the Platform by End User.

1.7. “Scheduled Downtime” means the following Scheduled Downtime periods ("Maintenance Windows") currently reserved by HireVue, which may be changed from time to time on notice to Buyer: A maximum of four (4) hours per semi-monthly period between the hours of Midnight (12:00 A.M.) and 4:00 A.M. Mountain Time.

1.8. “Services” means, collectively, the Platform and related services provided hereunder, including the Subscription Services, the features and functionality described in the Documentation, and any other professional services and customer support.

1.9. “Service Order” means the document that specifies the Services to which the Buyer has subscribed, the applicable subscription term(s), and applicable fees. This document may also be referred to as a “Purchase Order”, the form and substance of which must be approved by both Parties in writing.

1.10. “Site Availability” means the percentage calculated by dividing (a) the Site Uptime by (b) the difference between the total amount of clock time and the Scheduled Downtime actually used by HireVue, in a given Month.

1.11. “Site Uptime” shall mean the total time in a month during which all material parts of the HireVue website are operating properly and available for access and use by Authorized Users.

1.12. “Subscription Services” are defined as the HireVue hosted software services to which the Buyer purchases a subscription pursuant to a Service Order.

1.13. “Unscheduled Downtime” means the number of seconds the Services are unavailable in a particular month which are due to (i) force majeure events beyond the reasonable control of HireVue or HireVue’s service providers, or (ii) a general failure of the Internet.

1.14. “Usage Data” means entirely anonymized data not attributable to any Authorized User, End User or Buyer which reflects data points such as volume of interviews and general patterns of use.

2. Ordering, Services and Data.

2.1. Buyer shall order Services by mutual execution of a Service Order which provides, at a minimum, the specific Subscription Services ordered and the price and term for such Subscription Services. The Service Order shall be incorporated into this Agreement by reference and in the event of a conflict between the terms of a Service Order and this Master Service Agreement, the terms of the Service Order shall prevail. Additional Services ordered in any subsequent Service Orders shall be governed by, and incorporated by reference into this Agreement.

2.2. HireVue hereby grants to Buyer permission during the applicable subscription term identified in the applicable Service Order to allow Authorized Users to access and use the features and functions of the HireVue Services for which Buyer has paid all applicable fees via a browser or the HireVue mobile application (“Mobile App”) for Buyer’s internal business use.

2.3. Buyer hereby grants HireVue permission during the Term to (i) reproduce, distribute, display and perform Buyer Content to Authorized Users and End User in connection with providing the Subscription Services on behalf of Buyer; and (ii) to access and use the Responses (“Buyer Data”) to provide the Subscription Services to and on behalf of Buyer.

2.4. Buyer and HireVue acknowledge and agree that, as between Buyer and HireVue, Buyer Data is the property of Buyer. Buyer shall be responsible to ensure the End User has given legally sufficient consent for Buyer’s collection, retention and use of their Responses. HireVue shall provide a mechanism in the Platform to collect such consent.

2.5. HireVue collects and uses Usage Data for its internal research and development purposes and may disclose Usage Data in an aggregated format that in no way identifies Buyer or any particular Authorized User or End User.

2.6. Except for the rights expressly granted herein, no other rights, are granted to Buyer under this Agreement, whether expressly, by implication, estoppel, or otherwise, and all rights not expressly granted herein are reserved by HireVue. All right, title and interest in and to the Services, any software used by HireVue in connection with the Services, and related documentation are and shall remain the exclusive property of HireVue and/or its licensors, and nothing herein grants to Buyer any right to access copies of any such software, whether in source or object code form. Buyer acknowledges and agrees that: (i) the Platform, any software used in connection with the Services and related documentation are protected under U.S. and foreign copyright and other intellectual property laws; (ii) HireVue and its licensors retain all copyrights and other intellectual property rights in the Platform, any software used in connecting with the Platform and related documentation; and (iii) Buyer acquires no ownership in or to the Platform, software, data, or related documentation.

3. Fees and Payment.

3.1. Fees for Subscription Services are invoiced annually in advance, net thirty, or as otherwise expressly agreed and set forth in terms of the GSA Schedule Contract and Service Order or Purchase Order, and payments are due thirty (30) days from date of invoice. If all undisputed invoices are not paid when due, HireVue reserves the right to suspend access to the Services until payment is current. Such suspension shall not extend the expiration date of Services ordered. Except as expressly provided herein all amounts paid hereunder are final and nonrefundable.

3.2. The Contract Price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. HireVue shall include applicable taxes that will be stated separately on invoices issued to the Customer. Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1.

4. Term, Termination, and Expiration of Agreement and Renewal.
4.1. The term of this Agreement shall commence upon execution of this Agreement (“Effective Date”) and shall continue until the sooner to occur of: (i) expiration of all Service Orders; or (ii) termination per Section 4.2 (“Term”).

4.2. When the licensee is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, HireVue shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

4.3. Upon any expiration or termination of the Agreement, Buyer will cease all use of the Services and destroy all copies Documentation (if any) that are in Buyer's possession or under Buyer's control. Upon termination or expiration of the Agreement or a specific Service Order, Buyer shall have the following options with regard to Buyer Content and Buyer Data related to each of the terminated or expired Services: 1) if Buyer requests in writing, on or prior to the date of such termination or expiration, HireVue shall provide Buyer with a copy of the Buyer Data stored on HireVue servers, and HireVue shall then delete all such Buyer Data from HireVue servers; 2) Buyer may purchase a read-only subscription to the Platform for an annual fee equal to 15% of the last annualized subscription fee for up to three years or as otherwise mutually agreed by Parties; or 3) HireVue shall purge remaining Buyer Content and Buyer Data from the HireVue servers, and HireVue shall have no further responsibility to retain copies of Buyer Data. The parties agree and acknowledge that the foregoing requirement does not apply to Analytical Data to the extent it does not contain or embody Buyer Data in a form that can be attributed to Buyer.

4.4. Unless otherwise stated in a Service Order, the start date for Subscription Services purchased under this Agreement shall be the date Buyer is provided login credentials for the Platform.

5. Restrictions on Use. Buyer shall not, and shall prevent its Authorized Users from using the Platform to: (i) resell, rent, lend, lease, distribute, or timeshare the Platform or otherwise use the Platform on behalf of any third party (including on a “service bureau” or similar basis), or otherwise provide third parties with access or grant third parties rights to the Platform other than as expressly permitted by HireVue, (ii) alter or remove any marks or proprietary legends contained in the Platform; (iii) circumvent or otherwise interfere with any authentication or security measures of the Platform; (iv) interfere with or disrupt the integrity or performance of the Platform; (v) send SPAM or any other form of duplicative and unsolicited messages, other than marketing and promotional messages to End Users as enabled by the intended features of the Platform; (vi) access all or any portion of the Platform by means of any crawler, scraper, bot, spider, or any other similar script or automated process; (vii) transmit through or post on the Platform unlawful, immoral, libelous, tortious, infringing, or defamatory content; (viii) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs. Buyer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Platform, and shall not modify, translate, or create derivative works based on any element of the Platform.


6.1. Buyer understands and acknowledges that HireVue is solely a technology platform provider and does not participate in the interview, selection, or hiring of candidates, which is Buyer’s sole responsibility, notwithstanding use of the Service as a part of and in connection with such activities. Accordingly, it is Buyer’s sole responsibility to comply with all applicable laws regarding its use of the Service and with the Buyer Content it presents to its Authorized Users and End Users, including without limitation all applicable employment and hiring laws and regulations and all record keeping and data protection regulations in connection with the collection, processing, disclosure, subject access requests, retention, and transfer of personally identifiable data under the laws of the country and any other local jurisdiction in which Buyer is operating or collecting and transferring personal data. HireVue shall have no liability related to the Buyer Content presented to Buyer’s Authorized Users or End Users, or for record keeping requirements and data protection obligations applicable to Buyer unless expressly assumed by HireVue pursuant to this Agreement.

6.2. Buyer is responsible for providing and maintaining adequate facilities, computer equipment, internet connections, connectivity and firewall access required for the use of the Services. Such technical requirements can be viewed at http://hir.vue/15S5OOH.

6.3. Buyer agrees not to ask Respondents for, and to instruct Respondents not to provide, any PHI or SPI in any Responses. Should Buyer become aware that any PHI or SPI is provided by an End Users in any Response, Buyer agrees to promptly notify HireVue and request redaction of such information from the interview or deletion of the interview where redaction is not feasible. As used herein, “PHI” means Protected Health Information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). “SPI” means Sensitive Personal Information consisting of date of birth, social security number, driver’s license or other state-issued identification number, or financial account information.

6.4. Buyer shall notify HireVue in the event of a subject access request (or equivalent request from Respondents) and provide HireVue direction with regard to correcting or deleting personal data in response to such requests made to Buyer. HireVue shall notify Buyer within five (5) business days if it receives any such subject access requests related to End Users and both parties shall cooperate to provide a response and take action in compliance with applicable legal requirements.

7. Warranty

7.1. HireVue shall provide the Services in a professional and workmanlike manner and in compliance with the Documentation in all material respects. During the subscription term set forth in an applicable Service Order, in the event that Buyer notifies HireVue that the Services do not materially conform to the specifications set forth in such Service Order and the product documentation provided by HireVue, HireVue shall use commercially reasonable efforts to provide Buyer with support to address such non-conformity. EXCEPT AS EXPRESSLY SETFORTH HEREBY, THE SERVICES ARE PROVIDED “AS-IS” AND “WHERE-IS”, AND HIREVUE MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, TO BUYER OR ANY OTHER PERSON OR ENTITY AND EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL SUCH IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE RESPONSES, METRICS, SCORES, AND ANALYTICS, INCLUDING BUT NOT LIMITED TO THOSE AS TO THE ACCURACY, SECURITY, RELIABILITY, PERFORMANCE, RESULTS, TIMELINESS, COMPLETENESS, TITLE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES, DELIVERABLES OR ANY INFORMATION PROVIDED IN CONNECTION THEREWITH, OR ANY SELECTIONS OR HIRING DECISIONS MADE BY BUYER IN CONNECTION WITH THE USE OF THE SERVICES OR OTHERWISE. HIREVUE DOES NOT WARRANT THAT THE
8. Optional Features. The following terms apply if Buyer enters a subscription for, uses or enables the following HireVue products, features or functionality.

8.1. Direct Access Links. Buyer shall not be permitted to activate Direct Access Links functionality.

8.2. Public Share Links. If Buyer uses HireVue’s Public Share Links feature to publish links to Buyer Content or Buyer Data on social media or other public mediums, Buyer agrees: a) Buyer has all the rights and licenses necessary to publicly share any content made accessible through the Public Share Links (including consent from the End User as applicable); b) Buyer shall not publicly share any content through the Public Share Links which is inappropriate, defamatory, profane, libelous, tortuous or in any way illegal; and c) HireVue shall have the right to remove any Public Share Links to content that violate (a) or (b) as solely determined by HireVue.

8.3. Insights. (otherwise known as "IRIS"). Buyer hereby grants to HireVue permission during the Term to perform (or have a third-party service provider perform) certain processing, certain transcription, transformation, and analytics on the non-personally identifiable information included in Buyer Data and associated therewith (such as text transcripts of audio and visual/audio components, subsequent actions and results, etc.,) alone and together with Usage Data, to derive certain mathematical, derivative, index, scoring, metric, associative, predictive, comparative, statistical, algorithmic, and contextual data therefrom (the "Analytical Data"). Unless otherwise stated in the Service Order, HireVue may use Analytical Data in connection with developing, enhancing, maintaining, supporting, and providing the HireVue Service to Buyer and HireVue’s other customers, provided that HireVue may not disclose Buyer Data to any third party in raw form, or disclose any personal information regarding Authorized Users or End Users, or identify Buyer, Authorized Users or End Users on an individual basis as the source of such Analytical Data. In the event that the applicable Service Order excludes the foregoing rights and the Service Order includes the Insights Service, (a) Analytical Data will only be used to provide the Insights Service to Buyer, and (b) the Insights Service will NOT provide any analytical data derived from any other HireVue customers’ use of the HireVue Service.

9. Publicity. During the term of this Agreement, Buyer hereby agrees that HireVue shall have the right, but not the obligation, to list Buyer as a customer who uses the Services on the HireVue website and/or in presentations and link to Buyer landing pages. HireVue will remove Buyer’s name from any such list within thirty (30) days after any termination of this Agreement or upon Buyer’s request. Neither party may issue any news release concerning this Agreement without the other party’s consent. HireVue acknowledges that advertising is limited by GSA regulations and the Contract Disputes Act.

10. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

11. Assignment. This Agreement may not be assigned by either party without the other party’s prior written approval, except that either party may assign this Agreement in connection with any merger, or reorganization or any sale or transfer of all or substantially all of its assets or stock. If the assigning party is Buyer and the merger or acquisition results in the size of the surviving or successor entity being materially larger than the size of Buyer prior to the merger or acquisition, Buyer and HireVue will meet in good faith to determine a commensurate increase in price for the remaining subscription period for any unlimited use subscriptions which will be executed in a new written Service Order and/or Purchase Order. Subject to the foregoing, this Agreement shall be binding upon the parties, and upon their heirs, assignees, agents, contractors, and successors.

12. Indemnification and Limitation of Liability

12.1. HireVue shall indemnify, defend and hold harmless Buyer and its affiliates and their respective officers, directors, employees, agents and contractors, from and against, and pay any costs, expenses and amounts finally awarded or agreed to in settlement of, any and
all third party claims to the extent such claims are based upon (i) the negligence and/or willful misconduct of HireVue in performing this Agreement, (ii) any allegation that the software underlying the Platform, when used as provided and in accordance with the terms and conditions of this Agreement, infringes such third party's intellectual property rights, or (iii) HireVue's violation of applicable laws.

12.2. Resolved

12.3. In all requests for indemnification under Section 12.1 above (i) Buyer shall promptly provide HireVue with written notice thereof and, at HireVue's request and expense, reasonable cooperation, information, and assistance in connection therewith; and (ii) HireVue shall have control and authority with respect to the defense, settlement, or compromise thereof, provided that it shall not settle any such claim without prior written consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned, or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C.§ 516.

12.4. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EXCEPT FOR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12.1 ABOVE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNT PAID TO THE OTHER PARTY UNDER THIS AGREEMENT.

12.5. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM HIREFUVE'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

13. Independent Contractors. HireVue and Buyer are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties. Neither Party is an agent or representative of the other nor is either Party authorized to, and shall not, make any warranties or representations or assume or create any other obligations on behalf of the other.

14. Confidentiality. 14.1. Each party (each a "Discloser") agrees that, in the course of performing its obligations hereunder, either might provide to the other party (each an "Owner") or develop (owner information identified as confidential or that reasonably could be construed as confidential) ("Confidential Information"). HireVue’s Confidential Information shall include, but shall not be limited to, HireVue’s trade secrets, know-how, user manuals and screens, development information, computer programs, marketing plans, financial data, and Buyer’s Confidential Information shall include, but shall not be limited to raw Buyer Data (excluding Analytical Data to the extent not embodying raw Buyer data), billing information, software, and systems. During the Term of this Agreement and at all times thereafter, the Recipient and its employees and agents shall maintain the confidentiality of the Confidential Information and not sell, license, publish, display, distribute, disclose or otherwise make available the Confidential Information to any third party nor use such Confidential Information except, in either case, as authorized by this Agreement or in connection with the performance or enforcement of this Agreement. The Recipient shall not disclose any such Confidential Information to persons not an employee or agent of Recipient nor to its Affiliates without the prior written consent of the Discloser. Any misuse or breach hereof must be reported promptly. Nevertheless and notwithstanding the foregoing statement, each party will attempt to comply with legally executed subpoena served upon such party.

14.2. The non-use and non-disclosure obligations of this Section 14 shall not apply to any information that (a) was already known to the Recipient at the time of disclosure, (b) was already in the public domain at the time of disclosure, or (c) was received or developed by the Recipient independent of any information received from the Discloser. Recipient may disclose information pursuant to a request under applicable law. Unless prohibited by law, if the information requested is Discloser Confidential information, Recipient shall notify Discloser of the request and give Discloser a reasonable opportunity to establish that the Discloser Confidential Information is exempt from disclosure under one or more exemptions under applicable law.

14.3. HireVue recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor. Notwithstanding the foregoing, the Parties will utilize best efforts to obtain the maximum protection available for HireVue Confidential Information.

15. Compliance with Laws. The parties shall, in the performance of all obligations hereunder, fully comply with all applicable international, Federal, State and local laws, ordinances, treaties, rules, regulations, orders and policies applicable to or binding upon them.

16. E-Business Activities. Either party may use a third party service provider in connection with business activities (e.g., to route or translate EDI or XML messages, or to host web based services). The party contracting with a service provider must require that such service provider (a) use information disclosed to or learned by such service provider in connection with providing services solely for the purpose of providing the applicable services, and (b) not disclose such information to any third party. Each party will be liable for the acts or omissions of its service provider in connection with activities contemplated by this Agreement.

17. Survival. The provisions of this Agreement that are intended to survive termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement will survive termination or expiration.

18. Entire Agreement. The parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist Service Order and/or Purchase Order(s), is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter of this Agreement. In no event will contractual terms inserted in a Buyer’s purchase order be incorporated into or made a part of this Agreement.

19. Force Majeure. Except for any obligation to pay amounts due, either Party hereto will be temporarily excused from performance hereunder, in whole or in part, for any period of time that the Party is prevented from performing its obligations as a result of an act of God, governmental regulation or act, war, natural catastrophe, civil disobedience, court order, or other cause beyond the Party's reasonable control. Such non-performance shall constitute grounds for default.

20. Governing Law. This Agreement is made in accordance with and is governed and construed under The Federal Laws of The United States, without reference to conflicts of laws principles.

21. Legal Advice. Buyer acknowledges and agrees that HireVue has not and will not provide Buyer with any legal advice and specifically HireVue has not given legal advice regarding compliance with employment, data privacy, or other relevant laws, rules, or regulations in the jurisdictions in which
Buyer uses the Services nor will Buyer construe any HireVue communications as legal advice. Buyer agrees that it is solely responsible for drafting and approving its own Buyer Content, including legal review as necessary.

22. Reserved.

23. Acknowledgement. Each party acknowledges that it has read and understands this Agreement, expressly agrees the signatory hereto has full power and authority to execute this Agreement, and agrees to be bound by its terms and conditions. Further, it represents that it has consulted, or has had the opportunity to consult with its legal, tax, and financial advisors in connection with the execution and performance of the Agreement. Buyer understands and agrees that except as expressly set forth in Section 4.2 HireVue offers no buy-backs, money back guarantees, or refunds. Buyer acknowledges and agrees that Buyer is not relying upon any verbal or written representations whatsoever, except as expressly set forth in this Agreement. This Agreement can only be modified in writing, signed by the parties, or their duly authorized representatives. Buyer acknowledges and agrees that HireVue does not guarantee or represent that any software or services conveyed or provided hereunder, when or where accessed, used, provided, or installed, will guarantee any results.

By signing below, the signatory expressly acknowledges and agrees he/she has all requisite power and authority to bind HireVue or Buyer, as applicable, to the terms of this Agreement.

HireVue, Inc.

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

Buyer:

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Infinera Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity,” defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or itsbonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

INFINERA CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

THIS ATTACHMENT establishes the terms and conditions for use of any Infinera software that is embedded on or supplied with Infinera equipment.

1. Right to Use License; Restrictions. Subject to these terms, the Ordering Activity is hereby granted a personal, non-transferable, non-exclusive license, without right to sublicense, to use the copy and version of Infinera software and any documentation that is supplied therewith (the “Software”) for its own internal business purposes and in object form only. Each license is specific to the release and particular network element with which it is supplied. The license to use the Software does not include and the Ordering Activity shall not, without Infinera’s prior written consent, (i) reproduce (except as expressly set forth herein), modify, translate or create any derivative work of all or any portion of the Software; (ii) sell, rent, lease, loan the Software
otherwise transfer the license granted hereunder; (iii) reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of the Software, (iv) display or disclose the software to any third party other than persons employed by the End User who are using it on the Ordering Activity’s behalf at the Ordering Activity’s premises (v) use the software for third party training, commercial time sharing or service bureau use; (vi) remove, alter, cover or obfuscate any copyright notices, trademark notices or other proprietary rights notices placed or embedded on or in the Software; (vii) unbundle any components of the Software; (viii) remove any Software from any Infinera equipment in which it is embedded; or (ix) cause or permit any third party to do any of the foregoing. Ordering Activity may make one copy of the Software solely for backup and archival purposes. Ordering Activity will include on any copy of the Software it makes all markings, notices and legends affixed to or embedded in the Software. Ordering Activity will maintain a record of the number and location of all copies of Software that it makes, and will make those records available to Infinera on request.

2. Ownership Ordering Activity acknowledges that the license granted under this Agreement does not provide Ordering Activity with title to or ownership of the Software, but only a right of limited use under the terms and conditions of this Agreement. Sole title to the Software and documentation and to any corrections, bug fixes, enhancements, modifications, updates, upgrades, new versions, derivative works and copies of the Software and documentation, and to any associated patents, trademarks, trade secrets, copyrights or other intellectual property rights, remains with Infinera or its licensors.

2. Warranty Disclaimer. EXCEPT AS SET FORTH IN EXHIBIT A, INFINERA MAKES NO OTHER WARRANTY TO THE ORDERING ACTIVITY, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, OR ANY PART THEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE, OR TRADE. INFINERA DOES NOT WARRANT THAT ANY EQUIPMENT, SOFTWARE, OR PART THEREOF WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE, OR ERROR-FREE, OR THAT ANY ERRORS IN THE EQUIPMENT OR THE SOFTWARE WILL BE CORRECTED.

3. Reserved.

4. Export Restrictions. Ordering Activity acknowledges that Infinera products are U.S. origin goods and agrees not to export, re-export, transfer or allow third parties to access any Infinera products that it purchases or licenses where such export, re-export, transfer or access is not permitted under the applicable rules and regulations of the United States Government and agencies.

5. Reserved.
### Exhibit A PRODUCT WARRANTY

#### 1.01 Warranty Term

Infinera warrants that during the Hardware Warranty Period or Software Warranty Period, as applicable, the Products shall be free from defects in design, material and workmanship under normal use and service, and shall conform to Infinera’s applicable Specifications. The respective Hardware and Software Warranty Periods for Products are set forth in the table below and commence upon shipment of the Product.

<table>
<thead>
<tr>
<th>Product Description</th>
<th>Warranty Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTN-X (XTC-2, 2E, 4 &amp; 10)</td>
<td>2 years / 90 days</td>
</tr>
<tr>
<td>DTN</td>
<td>2 years / 90 days</td>
</tr>
<tr>
<td>FlexILS (MTC-9)</td>
<td>2 years / 90 days</td>
</tr>
<tr>
<td>XT-500</td>
<td>1 year / 90 days</td>
</tr>
<tr>
<td>CX (CX-10E, CX-40E, CX-100E)</td>
<td>1 year / 90 days</td>
</tr>
<tr>
<td>XTM-Series (TM-102, 301, 3000 &amp; NID &amp; EDU)</td>
<td>1 year / 90 days</td>
</tr>
<tr>
<td>XTG-Series</td>
<td></td>
</tr>
</tbody>
</table>

#### 1.02 Warranty Exceptions

The Parties acknowledge and agree that Infinera shall not be liable pursuant to Section 2.01 for: (i) Products that are abused improperly or improperly handled or stored by any person other than Infinera or its authorized services agents; (ii) Products that are maintained, repaired, modified or altered by any person other than Infinera or its authorized service agents; (iii) damage to Products that occurs from any cause other than ordinary use (such as, for example, acts of nature, accident, fire, lightning, water damage, neglect, misuse, improper installation or testing, or unauthorized attempts to repair, alter or modify); (iv) normal wear and tear or obsolescence; (v) use of the Product not in accordance with the Specifications or any operational materials provided by Infinera; or (vi) use of the Products with third party products not sold by Infinera, e.g., using grey market or third party products not purchased from Infinera with Products without Infinera’s express written consent. In addition, Infinera shall not be responsible for any Products that are installed by companies and/or contractors that are not certified to install the Products.

#### 1.03 Third Party Products

If an Ordering Activity procures or installs a product not developed or manufactured by Infinera (“Third Party Product”), then Infinera makes no warranty with respect to such Third Party Product, and Ordering Activity’s use of such product is at their own risk and may void the warranty for the Products in which such Third Party Product is installed. Further, Infinera shall have no obligation to provide hardware or software support for such Third Party Product.

#### 1.04 Warranty Procedure

During the applicable Hardware Warranty Period or Software Warranty Period, Ordering Activity promptly shall notify Infinera of any warranty claim. If it is determined by Infinera that an item of Product needs to be returned, a return material authorization (“RMA”) number shall be assigned by Infinera.

#### 1.05 Hardware RMA Process

During the Hardware Warranty Period, Infinera shall, within thirty (30) calendar days of receipt of a returned item of Product with a valid RMA number, repair or replace and, if needed, redesign, any such item (hereinafter an “item”) that is defective as to design, workmanship or materials, provided that: written notice of any defect is given to Infinera promptly upon discovery of the claimed defect, such notice is given to Infinera within the Hardware Warranty Period specified above, and the defective item is promptly returned to Infinera. All repaired and replaced parts shall be shipped preloaded with the current version of the Software used by Ordering Activity. Ordering Activity agrees to return such item of Product within thirty (30) days of the date an RMA ticket is opened for such item. All decisions to repair or replace or redesign shall be at Infinera’s option. If Infinera provides an advance replacement Product to Ordering Activity and does not receive the failed Product from Ordering Activity within seven (7) calendar days of the date such replacement Product was sent to Ordering Activity, Ordering Activity agrees to purchase such replacement Product and pay the Purchase Price for the replacement Product provided by Infinera.

Any item repaired or replaced by Infinera pursuant to the terms of this warranty shall continue to be warranted for the longer of the remainder of the original Hardware Warranty Period for such Product or ninety (90) days. Item(s) which are replaced hereunder shall automatically become the property of Infinera and their replacement shall become the property of Ordering Activity. Infinera shall be responsible for the cost of shipping and insuring the items to and from Ordering Activity.

#### 1.06 Software Maintenance Releases

During the Software Warranty Period and during any period for which the Ordering Activity has purchased Software Subscription Services, Infinera agrees to provide to Ordering Activity all applicable maintenance releases for the Software for software bug fixes for a release of Software purchased by Ordering Activity for the shorter of: (i) two (2) years from the initial release date of the Software; or (ii) the release date for the second Software release following such Software release. The Parties agree that Infinera shall have the right to provide such maintenance releases of Software as part of a general release of Software; provided, however, that such provision of a Software release shall not grant Ordering Activity with additional right to use licenses to any additional features included in such release. Notwithstanding anything to the contrary in this Agreement, Infinera makes no warranty with respect to any third party software included with the Products. Ordering Activity’s sole remedy with respect to such third party software shall be pursuant to the original licensor’s warranty, if any, to Ordering Activity, to the extent permitted by the original licensor.
7. **1 EXTENDED WARRANTY SERVICES**

1.1 Extended Hardware Warranty. Ordering Activity shall have the option to purchase annual extensions to the Hardware Warranty Period for the hardware portion of the Product (the “Extended Hardware Warranty”).

1.2 Reserved.

1.3 Reserved.

8. **2 SOFTWARE SUBSCRIPTION/SUPPORT SERVICE**

Ordering Activity may purchase an annual software subscription service (the “Software Subscription Service”) for the Software to the extent eligible for Software Subscription Service, for the first year from the purchase of the Product, for each DTC, OTC, and ATC. For the Infinera DTN-X, this service is called the “Software Support Service”, and the Ordering Activity may purchase an annual software support service for each XTC chassis, as well as for each DTN-X line card (AOLM, AOLX, SOLM, or SOLX). After the first year from the date of purchase of the Product, the Ordering Activity shall have the option to purchase the Software Subscription/Support Service on an annual basis. The Software Subscription/Support Service entities Ordering Activity to all new software releases (on an “if and when available” basis) of the Software. The Software Subscription/Support Service shall be available to Ordering Activity on an annual basis, commencing on the date set forth in the purchase order, and shall apply to each new DTC, OTC, ATC, XTC, or DTN-X line card on the date the Product comprising such DTC, OTC, ATC, XTC, or DTN-X line card has been Accepted by Ordering Activity. The Parties acknowledge and agree that Infinera has no obligation to develop any future Software.

The Infinera Software Subscription/Support Service commences upon Product Acceptance. The Parties acknowledge and agree that the Software Subscription/Support Service shall apply to all DTCs, OTCS, ATCs, XTCs, and DTN-X line cards deployed in Ordering Activity’s network, including any laboratory equipment.

Ordering Activity may elect to discontinue this Software Subscription/Support Service at any time. Upon such discontinuation, Infinera shall remit to Ordering Activity the pro rata portion of pre-paid fees for the Software Subscription/Support Service. In the event that Ordering Activity elects to issue a new purchase order to reinstate coverage under the Software Subscription/Support Service after discontinuing such service, or Ordering Activity elects to purchase the Software Subscription/Support Service at any time after the date any Product is first Accepted by Ordering Activity under this Agreement, Ordering Activity agrees that it shall be obligated to pay a reinstatement fee equal to the fees that Ordering Activity would have paid under the Software Subscription/Support Service for any period of discontinuation.

9. **3. EF&I SERVICES**

Site Survey and Detailed Engineering Package:

- Conduct a site survey of each equipment site location to verify local conditions
- Prepare site issues report
  - Includes conditions requiring remediation prior to install and/or other such items, and their assignments to responsible parties

- Prepare initial Engineering Design Package (EDP)/Engineering Document
  - Includes installer’s SOW, installation notes, list of equipment and installation materials, site access/security requirements, cable running list (power, fiber and data), floor plan, cable run diagram, grounding schematic, rack/cabinet facing diagram, link engineering drawings, node acceptance document, link acceptance document, IP design and commissioning data

- Prepare installation materials per specifications
  - Materials can include, per engineering design: Infinera racks/cabinets; vertical fiber duct to connect existing horizontal duct to fiber management in new/existing equipment rack/cabinet (up to 2 per rack/cabinet); intra-bay power cable and DC power cable runs for the chassis site locations (assuming no intermediary connection points); power, ground, lugs and terminations; intra-shelf/node line side fiber patch cables; intra-node Nodal Control and Timing (NCT) CAT5 Ethernet cabling; and labeling materials. Materials for client side fibers can also be defined, and quoted outside of scope. Breakers and/or fuses for chassis site locations and rack spacer/cable managers are also included, per engineering design, for deployments in the Americas.

- Refine engineering design package (use mutually agreed-upon format)
  - Includes contact list, directions to site (or GPS coordinates), Installer’s SOW, Installer work items and installation notes, list of equipment and installation materials, floor plan drawing and rack elevation drawing, equipment shelf detail drawings, cable running lists (power, fiber and data), cable run diagram, power cable assignment and management information, optical fiber assignment and management information, commissioning data.

- Prepare and furnish final as-built Engineering Design Packages (EDPs)/Engineering Documents
  - Note: Non-NEBS cabinets are provided for standard Turnkey Install within the EMEA and APAC region. NEBS compliant cabinets are available as Out of Scope work. For all other regions, racks are provided for DTN/ATN standard Turnkey Install and NEBS-compliant cabinets are provided for standard DTN-X standard Turnkey Install.

**Materials Planning and Procurement:**

• Procure, stage and deliver to site locations the following materials, as applicable:
  o Infinera equipment rack(s)/cabinet(s) and spacers/cable managers (if DTN-X cabinet is not ordered).
  o Rack/cabinet mounting hardware, anchors and top-support materials for each equipment rack/cabinet
  o Infinera provided PDU/Fuse panel for Infinera OTC/ATC site locations only
• Power cables – Ground cable to connect new rack/cabinet to existing grounding system
  o Ground cable to bond Infinera chassis to rack/cabinet
  o Ground cable to connect new rack to existing grounding system
  o Ground lugs, H-Taps, earth bar connection(s) and all necessary associated materials
  o 2” or 4” Fiber duct or copex equivalent (vertical on rack/cabinet). (Express downspouts that are not required to be cut are included in standard scope of work. Any downspouts that require a cut are Out of Scope work.)
  o Line-side and intra-node fibers
    Consumables (to include velcro, cable ties, labels, waxed cord, etc.)
• Install Site Infrastructure:
  • Accept delivery of Infinera equipment and materials at third-party storage facility
    o For DTN-X it is preferred to drop ship directly to site with inside delivery.
  • Unpack, inventory, inspect and deliver all equipment and installation materials to site location footprint
  • Install new rack/cabinet, or use existing equipment rack/cabinet at each site location footprint
  • Install a fuse panel/PDU into new or existing equipment rack/cabinet at each Infinera OTC/ATC site location
  • Ground all new equipment racks/cabinets to existing ground system
  • Install and terminate DC power cabling (single insulated by default, double insulated if required) from customer Battery Distribution Fuse Bay (BDFB)/Power distribution Panel (PDP) to Infinera equipment shelves and install and terminate power to an appropriate fuse panel in OTC/ATC site locations.
  • Infinera DC power cable sizing is based on Infinera equipment maximum draw @ 55 degrees Celsius. Any other calculations using other than 55 degrees Celsius is Out of Scope.
  • The following table defines the power runs included with the standard Scope of Work. Delivery of power runs beyond the listed specifications is considered Out of Scope Work.

<table>
<thead>
<tr>
<th>Product Line/Chassis</th>
<th>Number and Type of Feeds</th>
<th>Max Cable Length*</th>
<th>Max Cable Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTN/ DTC</td>
<td>One (1) A Feed and Return, and One (1) B Feed and Return</td>
<td>Up to 50 ft (14.24 m)</td>
<td>4/0 AWG or 25 mmsq</td>
</tr>
<tr>
<td>ATN/ ATC</td>
<td>One (1) A Feed and Return, and One (1) B Feed and Return</td>
<td>Up to 30 ft (9 m)</td>
<td>14 AWG or 2.5 mmsq</td>
</tr>
<tr>
<td>OLA/ OTC</td>
<td>One (1) A Feed and Return, and One (1) B Feed and Return</td>
<td>Up to 30 ft (9 m)</td>
<td>12 AWG or 4 mmsq</td>
</tr>
<tr>
<td>DTN-X / XTC-10</td>
<td>Up to Six (6) A Feeds and Returns, and Six (6) B Feeds and Returns</td>
<td>Up to 30 ft (9 m)</td>
<td>1/0 AWG or 35 mmsq in EMEA</td>
</tr>
<tr>
<td>DTN-X / XTC-4</td>
<td>Up to Four (4) A Feeds and Returns, and Four (4) B Feeds and Returns</td>
<td>Up to 30 ft (9 m)</td>
<td>1/0AWG or 35 mmsq in EMEA</td>
</tr>
</tbody>
</table>

*Cable lengths are measured on the cable ladder, from the middle of the top of the equipment rack to the middle of the top of the BDFB/PDP.

• Label racks/cabinets and power cable according to approved customer standard. If no customer standard is provided, Infinera will label per established Infinera practice.
• ‘Red-Line’ engineering specifications
• Daily site clean-up and disposal of waste
• Supply of all required installation tools

Perform Equipment Installation & Commissioning:
• Unpack, inventory, and inspect all equipment
Install all new chassis’ in the rack/cabinet per the EDP/Engineering Document
Ground (bond) the new chassis’ to the rack(s)/cabinet(s)
• Install modules in the chassis’ per the EDP/Engineering Document
• If required, connect pre-terminated, existing power cables to each Infinera chassis.
• Install, scope, clean, measure insertion loss, test and connect all of the intra-node fiber jumpers and Line side fiber jumpers from equipment to customer line side fiber patch panels. (Standard service provides line side fibers up to 30 meter length, of SC-SC connector type.)
• Install Nodal Control and Timing (NCT) and DCN Ethernet cabling per the EDP/Engineering Document (if required)
• Label equipment shelves and intra node fiber, power cables & data cables per approved customer standard. If no customer standard is provided, Infinera will label per established Infinera practice.
• Perform site quality audit checklist
• Provide ‘Rack Face’ as-build EDP/Engineering Document and intra-node fiber diagram

Commission and Turn Up Equipment:
• Verify DC power and grounding
• Unpack and inspect all circuit packs & chassis backplanes
• Install all circuit packs
• Inspect, clean and install all intra-node fiber cables
• Connect any pre-existing, pre-terminated intra-node and Data Communication Network (DCN) management data cables (if required).
• Commission and configure equipment with pre-furnished network design and DCN/OSC IP Addresses
• Connect pre-installed fiber jumpers to Infinera line side modules per the EDP/Engineering Document (if required)
• Perform span clean up if required
• Install attenuators/pads per EDP/Engineering Document.

Note:  For ATN install, additional manual adjustment of span performance may be required to bring system in line with span engineering design specifications. If such adjustments are necessary because Infinera was provided with inaccurate fiber span information prior to the install project, additional labor fees shall apply for making span performance adjustments. The labor shall be rendered via the Infinera On Site Engineering Service.

Note:  For the Infinera ILS2 Line system, additional manual adjustment of Raman span performance may be required to bring system in line with span engineering design specifications. Such adjustments must be performed via the Infinera On Site Engineering Service.

Note:  For SLTE Activation, additional manual adjustment of span performance may be required to bring system in line with span engineering design specifications. Such adjustments must be performed via the Infinera SLTE Link Activation Service.

Note:  For networks carrying 40GbE and higher transmission rates, additional fees shall apply for testing. These fees shall be charged via the Infinera On Site Engineering Service.

Perform Test, Acceptance, and 24 Hour Bit-Error Rate Test (BERT):
• Alarm clearing on each span and digital link
  Inspect and validate performance for each span and digital link
  Furnish appropriate test equipment for the applicable service types
• Configure and run BERT on a single end to end circuit; standard test period is 24 hours
• Provide BERT results in a mutually agreed upon format
• Provide notification to customer operations for node / network acceptance
• Perform equipment and alarm verification testing
• Provide link design as-build diagram
• Provide node/link acceptance documentation

Program Management and Technical Oversight:
• Identify/assign a dedicated Infinera Program Manager as the single point of contact for all project logistics, schedules and technical issues. Program Manager responsibilities include:
  o Recommend best practices
  o Manage all survey and installation, test and turn up schedules
  o Provide regular updates to customer management within a mutually agreed upon time interval
• Identify/assign a Lead Technical Oversight Engineer or Tech Support Engineer whose responsibilities include, but are not limited to:
  o Prior to deployment, assist customer with technical requirements, i.e. IP Addressing
  o Primary technical interface for Field Teams in all aspects of installation, commissioning, troubleshooting, route validation and testing
  o Interface and assist Ordering Activities with technical issues during the deployment process
  o Span and digital link turn-up, testing and acceptance
Ordering Activities Responsibilities

• Provide Infinera with pre-survey data, which includes:
  o Site address, site contact information, and access information
  o Aisle/bay rack/cabinet assignment(s)
  o Aisle/baybreaker assignments for DC Power (if applicable)
  o Specific DC power requirements – i.e. cable size, cable diversity
  o Aisle/bay/shelf assignments for Outside Plant (OSP) fiber panel(s)
  o Aisle/bay/shelf assignment for DCN management network connectivity (where applicable)
  o Any specific hardware requirements – i.e. specific DC breakers, AC to DC rectifiers, specific fiber jumper manufacturer or requirement, etc.
  o IP Addressing schemes
  o Specific installation standards outside of Telcordia GR-1275
  o Labeling standards
  o Testing requirements and scope – i.e. if testing is beyond the scope described in this document

• Coordination of site access.

• Ensure that authorized staff for operation and maintenance is available during the entire EF&I period to provide assistance with Infinera Customer Support when requested.

Notify Infinera of any additions, relocations or changes to equipment via Infinera program manager and/or sales account team. Do not contact Infinera Support hotline (877-INF-5288) or email <techsupport@infinera.com>

Assumptions and Additional Conditions

Ordering Activity must have all pre-work 100% complete.

• All sites must be accessible by standard vehicles.
• Reasonable site access will be provided to all engineering, installation, and test personnel.
• Provide complete and accurate site location information.

10. ARRIVAL

4. INFINERA SPARES MANAGEMENT- NEXT BUSINESS DAY ARRIVAL

General. Infinera shall provide Ordering Activity with spares management services Next Business Day Arrival (“Spares Management NBD”). Spares Management NBD requires an annual service contract with Infinera that provides, in the event of a hardware failure, an advanced delivery of a replacement module will arrive at the designated Ordering Activity site no later than the following business day after the Return Material Authorization (RMA) request is issued by Infinera. After the replacement module arrives at the site, the defective module must be returned to Infinera within ten (10) calendar days. Infinera will provide delivery of a hardware replacement module by the next business day provided that the RMA number is issued before 2PM local time (PST in North America, or CET in Europe). All RMA's issued after 2PM local time will be processed the next business day and arrive the following business day thereafter.

Scope of Service. Spares Management includes the following:

• Access by Ordering Activity to the Infinera Customer Support Technical Assistance Center (TAC) 24 hours a day, 7 days a week, 365 days a year (24x7x365) to request a spare module.

• Obligation for the spare to arrive at the designated Ordering Activity’s site by the next business day of Infinera’s confirmation of the need for the dispatch with the appropriate spare module.

• Note that Spares Management NBD is available only for those cities mutually agreed upon by the Parties.

Assumptions and Additional Conditions. The provision of the Spares Management by Infinera is subject to each of the following assumptions:

• This Service does not include on-site engineer dispatch service(s). However, this service can be combined with the purchase of an Infinera First Line Maintenance service, which is sold separately.

• For all Ordering Activity laboratory equipment, and unless otherwise mutually agreed upon, this service shall provide Next Business Day Ship replacement service.

• Infinera shall not be obligated to provide Spares Management NBD until 45 days after the issuance and acceptance of a purchase order in accordance with the applicable agreement, and Ordering Activity has provided a complete list of its sites that are to be covered by this Service (addresses/GPS coordinates consistent with the delivery locations for the Product).

• In the event Ordering Activity purchases Spares Management NBD for Product following expiration of the Warranty Period, it must also purchase an Extended Hardware Warranty Service for a concurrent duration for such Product.

• Spares Management must be purchased for Ordering Activity’s entire network.

Ordering Activity Responsibilities. The Ordering Activity shall be responsible for each of the following:

• Cooperate with Infinera to confirm that Infinera has a complete listing of all Products, including serial numbers, in order to properly establish and track service entitlement.

• Provide a site identification or site contact number.

• Ensure that authorized staff for operation and maintenance is available during the entire support period to provide Infinera with information (e.g., model, serial number, current failure symptoms) upon request.

• The defective module is not required to be returned before Infinera delivers a replacement. After the replacement module arrives at the site, the defective module must be returned to Infinera within ten (10) calendar days.

• Notify Infinera of any additions, changes and relocations of equipment covered under this service.

Exclusions. The following items and conditions are excluded from the Spares Management NBD Service (and any calculation of performance penalties):

• RMA/FRU Exchange for Defects or malfunctions caused by:
• Actions of personnel not contracted by the Ordering Activity or Infinera;
• Failure of the Ordering Activity to follow Infinera’s installation, operation, or maintenance instructions;
• Failure of Equipment that is not serviced by Infinera;
• Abuse, misuse, or negligent acts of personnel not contracted by Infinera.
• FRU Defects or malfunctions caused by:
• Modifications made to FRUs by non-Infinera personnel; or
• The attachment to FRUs of Equipment not being supported by Infinera
• Consumable items that are not under maintenance support coverage as described in the FRU list.
• Delivery of documentation

11. INFINERA SPARES MANAGEMENT – 4 HOUR SPARES ARRIVAL

The Infinera Spares Management – 4 Hour Spares Arrival Service requires an annual service contract with Infinera. In the event of a hardware failure, this Service provides advanced delivery of a replacement module to the designated Ordering Activity site within 4 hours from the time the Return Material Authorization (RMA) was issued and approved by Infinera. The defective module is not required to be returned before Infinera delivers a replacement. After the replacement module arrives at the site, the defective module must be returned to Infinera within ten (10) calendar days.

Assumptions and Additional Conditions

• Infinera shall provide Spares Management Service in accordance with an agreed upon schedule once the following occur (i) acceptance of a purchase order for the Spares Management Service and (ii) and the Ordering Activity has provided a complete list of its sites to be covered by this service (addresses/GPS coordinates consistent with the delivery locations for the Product).
• The Infinera Spares Management – 4 Hour Spares Arrival Maintenance Service is available only for those cities and/or zip/postal codes specified on the Infinera then-current service coverage map. Service coverage outside of this range shall be mutually agreed upon on a case-by-case basis.
If the Ordering Activity purchases the Infinera Spares Management - 4 Hour Arrival Maintenance Service for equipment following expiration of the warranty period, it must also purchase an Extended Hardware Warranty for a concurrent duration.
• This Service does not include on-site engineer dispatch service(s).
• The Infinera Spares Management – 4 Hour Spares Arrival Service shall not apply to customer laboratory equipment, unless otherwise mutually agreed upon.
• The Infinera Spares Management – 4 Hour Spares Arrival Service must be purchased for the Ordering Activity’s entire network (excluding customer laboratory equipment), or as otherwise mutually agreed upon.

Ordering Activity Responsibilities

• Provide a site identification or site contact number.
• Ensure that authorized staff for operation and maintenance is available during the entire support period to provide Infinera Customer Support with information (e.g., model, serial number, current failure symptoms) upon request.
• Provide Infinera with a complete listing of all Covered Products and their deployed locations. The information must include the FRU type, serial number, and site location. The Ordering Activity is further responsible for providing Infinera with updates whenever this information changes. Infinera must have up-to-date information on Ordering Activity inventory at all times in order to maintain the 4 Hour arrival SLA provided by this service. Notify Infinera of any additions, relocations or changes to equipment via Infinera support hotline (877-INF-5288) or email techsupport@infinera.com.courses on the Product.

12. INFINERA FIRST LINE MAINTENANCE – 4 HOUR ENGINEER ARRIVAL

The Infinera First Line Maintenance – 4 Hour Engineer Arrival Service provides an on-site Technical Support Engineer (TSE) to remove a defective module and install its replacement, or to facilitate fault isolation that cannot be performed remotely. The TSE will arrive at the Ordering Activity site within 4 hours of Infinera confirmation that a dispatch is required. This Service is available on a 24 hours a day, 7 days a week, 365 days a year (24x7x365) basis. This Service provides:

• Access to the Infinera Orderinig Activity Support Technical Assistance Center (TAC) on a 24x7x365 basis to request dispatch of an engineer. If it is determined by Infinera that a module needs to be returned to Infinera, or that further on-site resolution is required, an Infinera TSE will be dispatched.
• An Infinera TSE will arrive at the designated Ordering Activity site within 4 hours of Infinera’s dispatch confirmation.
Assumptions and Additional Conditions

- Replacement modules are not included with this Service. However, the above Service can be combined with the purchase of an Infinera Spares Management Service, which is sold separately under an additional SOW.
- Infinera shall provide FLM Service in accordance with an agreed upon schedule once the following occur (i) acceptance of a purchase order for the FLM Service and (ii) the Ordering Activity has provided a complete list of its sites to be covered by this service (addresses/GPS coordinates with the delivery locations for the Product).
- The Infinera First Line Maintenance – 4 Hour Engineer Arrival Service is available only for those cities and/or zip/postal codes specified on the Infinera then-current service coverage map. Service coverage outside of this range shall be mutually agreed upon on a case-by-case basis.
- The determination as to whether or not the dispatch of a TSE is necessary will be made by Infinera at its discretion. The Infinera First Line Maintenance - 4 Hour Engineer Arrival Service is subject to geographic restrictions. Please refer to the Infinera 4 hour FLM coverage map for details, or talk with an Infinera Sales Representative.
- The Infinera First Line Maintenance – 4 Hour Engineer Arrival Service must be purchased for the Ordering Activity’s entire network, or as otherwise mutually agreed upon.

Ordering Activity Responsibilities

- Provide Infinera with a complete listing of all products covered by this Service, including serial numbers, in order to properly establish and track service entitlement.
- Provide site identification badge and on-site Ordering Activity staff contact information, for the TSE.
- Ensure that authorized staff for operation and maintenance is available during the entire support period, to provide Infinera with information (e.g., model, serial number, current failure symptoms) upon request.
- Notify Infinera of any additions, changes and relocations of equipment covered under this Service.

13. 7. Infinera Technical Training

The Infinera Learning Experience is a comprehensive suite of training courses and modules to train Ordering Activity personnel in the installation, administration, maintenance, and operations of the Infinera Digital Optical Network. Infinera utilizes the latest in learning technologies and methodologies to create a personalized learning environment, providing timely and relevant information in easily accessible formats.

Infinera offers its training courses in two formats:

- Classroom Learning Format: Infinera offers all of its courses in a classroom learning format with extensive hands-on labs on the latest Infinera equipment. Infinera has classroom locations at headquarters in Sunnyvale (CA, U.S.), London, and Hong Kong. Infinera can also deliver most class types at the Ordering Activity location.
- E-Learning Format: Infinera also offers many courses, videos, and tutorials in e-learning format. Most of our instructor-led courses require pre-requisites which are completed through e-learning. Elearning content is accessed through a compatible web browser to Infinera’s Learning Management System. Ordering Activity can choose to access the content on per course basis or an annual subscription. The annual subscription allows access to all Infinera Customer e-learning content for one year from purchase date.

Learning Management

The Infinera Learning Experience includes customer learning management. Our 24x7 online system is accessible through a compatible browser and will keep track of all aspects of the training experience. Each Ordering Activity and each student will have their own training record where Infinera will maintain training paths, recommended curriculums, completion status, exams, certifications, exams, and feedback. The system will supply the necessary reports for managers to track the progress of their staff.

Training Credits

The Infinera Learning Experience uses a “training units” model. In its simplest form, Ordering Activities buy training units which are good for one year from the date of purchase, then use the training units to purchase various training classes. The primary advantages of buying training units instead of classes directly in USD are flexibility and price protection. There are two types of training units – one type is for eLearning, and the other type is for instructor-led.

Infinera DTN-X Training Course Descriptions – Core Courses

- DTN-X Overview Course – This course is primarily delivered as an e-learning offering and can be completed at the student’s own pace. The course provides an overview of Infinera Digital Optical Network architecture, network applications, and product descriptions. This will include topics such as DTN-X and Optical Line Amplifier system architecture, hardware overview, signal flow, and an overview of the architecture, features, and capabilities of the Infinera Graphical Node Manager (GNM) and Infinera Digital Network Administrator (DNA). This class is also available per request in an instructor – led format. In a classroom, the minimum class size is 4 and maximum class size is 25.
- DTN-X Field Engineering – This three-day hands-on technical training course focuses on field personnel and training them to be able to turn up and test the DTN-X product line. The course will provide an overview describing the procedures to commission a Switching Transport Chassis (XTC). This will include such topics as commissioning a GNE, an SNE, an Expansion Chassis, fiberizing a digital span, provisioning a circuit, and interpreting alarms. This course has a prerequisite requirement of DTN-X Theory and hardware description to be completed via e-learning. This course, combined with the e-learning will prepare a student for field engineering certification exam. The minimum class size is 4 and recommended maximum class size is 8. Because this course is very much hands-on in a lab environment, this course is only available at an Infinera facility in Sunnyvale, London, or Hong Kong.
- DTN-X NOC Engineering – This three-day hands-on technical training course will provide an overview describing the procedures for operations, administration, maintenance, and provisioning of the DTN-X. This will include use of DNA, alarm descriptions,
troubleshooting, circuit pack configuration, querying and provisioning a working network element, understanding performance monitoring and alarm clearing techniques. Students will receive hands-on exercises for three days for OAM&P capabilities of the DTN-X. This course has a prerequisite requirement of DTN-X theory and hardware description to be completed via e-learning. This course, combined with the e-learning will prepare a student for NOC engineering certification exam. The minimum class size is 4 and the maximum class size is 12.

Infinera DTN-X Training Course Descriptions – Additional Courses

• DNA Fundamentals – This two-day hands-on technical training is designed for NOC Engineers who carry out surveillance and troubleshooting of the DTN/DTN-X network using Digital Network Administrator (DNA).

• Network Customer Service – This two-day hands-on technical training is designed for Ordering Activity Technical Support Engineers who rectify customer reported circuit issues on the DTN and DTN-X network.

• DTN-X Provisioning – This two-day hands-on technical training is designed for Service Delivery Engineers who design and provision services in the DTN/DTN-X network.

• DTN-X Deployment – This three-day hands-on technical training is designed for Deployment Engineers performing commissioning and configuration activities from a remote location using Digital Network Administrator (DNA) and Graphical Node Manager (GNM) who adds capacity on the network, confirms power levels, set thresholds, set up cross connects for trib to trib testing and ensure successful deployments of new nodes.

• Site Engineering – This four-day hands-on technical training is designed for Site Engineers who carry out site surveys and create work order packages for field techs to install and commission network elements and module adds. This training course will show the student how to configure a node, including addresses for the DCN, GMPLS and OSC, configure Line Modules and Band Mux Modules (BMMs), make all physical connections and other configuration options as well as performing software upgrades. Hands on exercises are done using Graphical Node Manager (GNM).

• First-Line Maintenance – This two-day hands-on technical training is designed for engineers who carry out first line maintenance activities. This training course will show the student how replace modules, retrieve logs, back up databases and perform other activities when given remote instructions and guidance from the Network Operations Center.

• Network Planning – This two-day hands-on technical training is designed for Network Planners who design the network with Infinera assistance. This training course will show the student how to manage network capacity, how to add and configure Line Modules and Band Multiplexing Modules (BMMs), plan and design node administration such as DCN and GMPLS IP addresses and NTP configuration, read optical power measurements, given an introduction to Digital Network Administrator (DNA) including in depth lessons on critical tools such as Digital Link Viewer (DLV) and Digital Bandwidth Manager (DBM). Students will also be given lectures to fully understand the signal flow through the DTN/DTN-X including explanations on Forward Error Correction (FEC) and Q-Values.

Infinera Training Course Descriptions – Legacy Products (DTN/ATN) DTN and ATN courses are available upon request.

Training Course Recommendations by Role

Infinera recommends the following training courses, by student role:

<table>
<thead>
<tr>
<th>Train Personnel for…</th>
<th>Detailed Description</th>
<th>Recommended Course(s)…</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Product Overview Only</td>
<td>For any staff requiring an introductory overview to the Infinera Digital Optical Network system.</td>
<td>Infinera DTN/ATN Product Overview</td>
</tr>
<tr>
<td>Installation and Commissioning</td>
<td>For staff that undertake the installation and commissioning of the equipment.</td>
<td>Infinera DTN/ATN Turn Up and Test</td>
</tr>
<tr>
<td>Maintenance and Field Operations</td>
<td>For staff that undertake maintenance of the equipment. This course needs to cover the details of the methods of operation, routine maintenance tasks, and fault finding</td>
<td>Infinera DTN/ATN Turn Up and Test Certification</td>
</tr>
<tr>
<td></td>
<td>For staff that undertake the operation and maintenance of the transmission equipment on fields, directed by NOC personnel.</td>
<td>Infinera DTN/ATN OAM&amp;P Certification</td>
</tr>
<tr>
<td>Network Management (I.e. NOC)</td>
<td>For staff who undertake the monitoring of the network from a central location, e.g. Network Operating Center (NOC), or similar.</td>
<td>Infinera Management Suite (DNA) Overview + Infinera DTN/ATN Troubleshooting</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>Configuration Management</td>
<td>For staff that undertake the remote provisioning of equipment using the Network Element Management System.</td>
<td>Infinera DTN/ATN OAM&amp;P Course</td>
</tr>
<tr>
<td>Network Administration</td>
<td>For the network administrator who is in charge of managing servers for backup/restore, defining user’s profiles and password, managing security and connection to the Data communication network; this course includes all applications and features of EMS/NMS</td>
<td>Infinera Management Suite (DNA) Overview</td>
</tr>
<tr>
<td>Network Planning</td>
<td>For network planning staff responsible for network modeling, planning and design.</td>
<td>Infinera Network Planning System Training (available through your Infinera Sales Engineer) + Infinera Management Suite (DNA) Overview</td>
</tr>
</tbody>
</table>

Scheduling Courses
Infinera flexibly schedules and provides its courses based on Ordering Activity request, and therefore there is no “set schedule” for our course offerings. To schedule an Infinera course, simply submit your training request to the Infinera Global Customer Technical Assistance Center (via phone, email, or Infinera Customer Web Portal), and a training specialist will work with you to schedule the appropriate courses.
14. SOFTWARE SUPPORT

Conditions to Provision of Services. During the Software Warranty Period, Infinera shall make available the following services to Ordering Activity for the Software:

15. 1. HELP DESK SUPPORT

Infinera shall provide a service desk (contacted through a telephone help line) to assist Ordering Activity in obtaining a quick response to network faults or troubleshooting questions (the “Technical Assistance Center” or “TAC”). The service desk shall log and track trouble tickets for reported faults within the scope of 3rd Line Support. The TAC help desk will be available 24 hours per day, 7 days per week and every day of the year (24 x 7 x 365). The number for the Infinera’s Technical Assistance Center is:

877-INF-5288 (463-5288) / Main 408-572-5200 email: techsupport@infinera.com fax: 408-572-5343

Additional access phone numbers for Infinera’s Technical Assistance Center:

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Access Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct within U.S.</td>
<td>1.408.572.5288</td>
</tr>
<tr>
<td>Toll-free within U.S.</td>
<td>1.877.463.5288</td>
</tr>
<tr>
<td>Toll-free within Australia</td>
<td>0011.8004634.6364</td>
</tr>
<tr>
<td>Toll-free within Benelux</td>
<td>00.800.4634.6372</td>
</tr>
<tr>
<td>Toll-free China Netcom</td>
<td>00.800.4634.6364</td>
</tr>
<tr>
<td>Toll-free China Telcom</td>
<td>00.800.4634.6364</td>
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<tr>
<td>Toll-free within Denmark</td>
<td>00.800.4634.6364</td>
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<tr>
<td>Toll-free within Finland</td>
<td>990.800.4634</td>
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<tr>
<td>Toll-free within France</td>
<td>00.800.4634.6372</td>
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<tr>
<td>Toll-free within Germany</td>
<td>00.800.4634.6372</td>
</tr>
<tr>
<td>Toll-free within Greece</td>
<td>00800.1809.204.3766</td>
</tr>
<tr>
<td>Toll-free within India</td>
<td>00.800.100.4014</td>
</tr>
<tr>
<td>Toll-free within Indonesia</td>
<td>001.803.015.204.3768</td>
</tr>
<tr>
<td>Toll-free within Italy</td>
<td>00.800.6300.6400</td>
</tr>
<tr>
<td>Toll-free within Japan</td>
<td>010.800.4634.6372</td>
</tr>
<tr>
<td>Toll-free within Mexico</td>
<td>001.855.587.7440</td>
</tr>
<tr>
<td>Toll-free within Spain</td>
<td>00.800.4634.6364</td>
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<tr>
<td>Toll-free within Sweden</td>
<td>00.800.4634.6364</td>
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<tr>
<td>Toll-free within Switzerland</td>
<td>00.800.4634.6364</td>
</tr>
<tr>
<td>Toll-free within U.K.</td>
<td>00.800.4634.6372</td>
</tr>
</tbody>
</table>

16. 2. SERVICE ESCALATION PROCEDURES

2.1 Defect Severity Levels. Defects (classified as Critical, Major, or Minor defects) for all Products are defined in this Section. The classification and reclassification of the defect level shall be at the reasonable discretion of Infinera; provided, however, that such classifications and reclassifications shall be in accordance with the definitions set forth in this Section. In the event a defect is subsequently reclassified to a higher severity level, the Service Restoration time period shall begin at the time the defect is reclassified.
(a) Critical Defects. “Critical Defects” means conditions under which the Product is inoperative and Ordering Activity’s inability to use the Product creates an emergency situation with respect to Ordering Activity’s business operations. This condition generally is characterized by a loss of network connectivity or service affecting a major customer or multiple other customers due to Product failure and requires immediate restoration or correction.

(b) Major Defects. “Major Defects” means conditions under which the Product is usable by Ordering Activity, with limited functions, but creates a manageable situation with respect to Ordering Activity’s business operations. The condition is not critical to overall Ordering Activity operations and does not severely restrict such operations.

(c) Minor Defects. “Minor Defects” means conditions under which the Product is usable and the condition does not adversely affect Ordering Activity’s operations. These problems are those resulting in a minor failure that is cosmetic or de minimis in nature.

2.2 Initial Response; Service Restoration; Defect Resolution. With respect to the terms utilized in the table below, the following definitions shall apply:

“Defect Resolution” is the time elapsed from Ordering Activity’s report of a defect to the time Infinera provides a final correction or modification of the Product that corrects the root cause of the defect.

“Initial Response” means the time it takes from Ordering Activity’s initial report of the defect until Ordering Activity speaks with the appropriate Infinera subject matter expert as set forth in the escalation table below. The measurement of Initial Response time does not apply when a Ordering Activity call is related to a previously reported defect.

“Service Restoration” means the time it takes Infinera to apply a functional resolution to the reported defect, meaning Infinera provides Ordering Activity with a temporary fix or workaround that solves a reported defect and that can be used by Ordering Activity with minimal inconvenience and minimal impact on Ordering Activity’s business operations.

Infinera shall exercise continuous and uninterrupted efforts, twenty-four (24) hours a day, seven (7) days a week, to achieve Service Restoration for any Critical Defects as soon as possible after reported by Ordering Activity. Without limiting the generality of the foregoing, the Parties agree that the time frames for Initial Response, Service Restoration and Defect Resolution set forth in the following table represent the estimated time limit for Initial Response, Service Restoration and Defect Resolution and Infinera shall use all reasonable efforts to achieve time frames that are better than the time frames set forth below.

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
<th>Service Restoration / Work Around</th>
<th>Defect Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical Defect1</td>
<td>Immediate (15 minutes)</td>
<td>4 hours</td>
<td>20 days for a patch (without hardware/firmware design change); 180 days (with hardware/firmware design change) in next Maintenance Release</td>
</tr>
<tr>
<td>Major Defect</td>
<td>30 minutes</td>
<td>24 hours</td>
<td>45 days for a patch (without hardware/firmware design change); 180 days (with hardware/firmware design change) in next Maintenance Release</td>
</tr>
<tr>
<td>Minor Defect</td>
<td>1 hour</td>
<td>N/A</td>
<td>Next Maintenance Release</td>
</tr>
</tbody>
</table>

1 With respect to all Critical Defects, Infinera shall provide hourly status updates to Ordering Activity until Service Restoration has been achieved.

2.3 Escalation of Unresolved Defects within Infinera. For all defects reported by Ordering Activity, Ordering Activity shall have the right to require Infinera to escalate Ordering Activity’s defect to the next appropriate tier in the applicable Infinera support organization. Such escalation is not intended to and shall not diminish Infinera’s obligations to restore and resolve defects within the applicable time frames. In addition, Infinera shall observe the following management notification procedures with respect to all unrestored Critical Defects:
(a) Service Interruption. Upon Ordering Activity’s report to Infinera of the existence of a Critical Defect, Infinera shall notify Infinera’s Tier 3 Support via an Infinera technical support engineer and any additional Infinera personnel as needed by Product. If Service Restoration with respect to a Critical Defect has not been achieved within thirty (30) minutes after the defect is reported by Ordering Activity to an Infinera technical support manager, as applicable, Infinera shall notify the appropriate Infinera supervisory management of the unrestored condition. If Service Restoration has not been achieved within one (1) hour after the defect is reported, the next higher level of Infinera supervisory management shall be notified of the unresolved condition.

(b) Extended Service Interruption. Upon the occurrence of a Critical Defect that: (i) affects multiple customers and Service Restoration has not been achieved within thirty (30) minutes following Ordering Activity’s report to Infinera of such Critical Defect; or (ii) affects special facilities, such as 911, governmental facilities, military, commercial airports, etc.; or (iii) includes media involvement (an “Extended Service Interruption” or “ESI”), then in addition to the Infinera personnel identified in subsection (a) above, Infinera shall notify Infinera’s Vice President of Service and Support and the Vice President of Hardware Engineering or Vice President of Software Engineering, depending on the nature of the defect, as applicable. Such notification shall be made by means of Infinera’s call center via telephone, facsimile or e-mail commencing within sixty (60) minutes following Ordering Activity’s report to Infinera of the Critical Defect and concluding within thirty (30) minutes thereafter.

Technical and management escalation contact information for the persons set forth in this Section are as follows:

<table>
<thead>
<tr>
<th>Level</th>
<th>Name</th>
<th>Position</th>
<th>Phone #</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 3 Support</td>
<td>24/7 TAC</td>
<td>Technical Support Engineer</td>
<td>1-877-463-5288</td>
<td><a href="mailto:techsupport@infinera.com">techsupport@infinera.com</a></td>
</tr>
<tr>
<td>Technical Support Director</td>
<td>Charlie Plitt</td>
<td>Director, Technical Assistance Center, Service and Support</td>
<td>1-877-463-5288</td>
<td><a href="mailto:cplitt@infinera.com">cplitt@infinera.com</a></td>
</tr>
<tr>
<td>VP, Service and Support, Office of the Chief Operating Officer</td>
<td>Lonny Orona</td>
<td>Vice President, Global Service and Support</td>
<td>1-877-463-5288</td>
<td><a href="mailto:loron@infinera.com">loron@infinera.com</a></td>
</tr>
</tbody>
</table>

2.4 Measurement of Response, Restoration and Resolution of Defects. Infinera shall provide to Ordering Activity a report that summarizes the percentage of defects responded to, restored and resolved within the time frames specified in this Section 2.

2.5 Reviews. As part of its ongoing support services, Infinera shall provide Operational reviews and service reports within mutually agreed to time frames (but no less than quarterly), which reports shall include, without limitation: (i) a detailed summary and status of all defects reported by Ordering Activity; (ii) the number of remote accesses by Infinera into Ordering Activity’s systems; (iii) the number of Maintenance and Support Services-related on-site visits; (iv) Maintenance Releases sent and applied to Products; (v) analysis of hardware and Software release schedules; and (vi) an analysis of RMA requests and fulfillment of same by Infinera.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

INFOCYTE

Incyte HUNT™ End User License Agreement

This End User License Agreement (“EULA”) is between Incyte and the Ordering Activity that has placed an order for the Incyte HUNT Platform (the “Ordering Activity”). Ordering Activity may not use the Platform unless and until Ordering Activity have consented to be bound by all of the terms, conditions and restrictions of, and have become a party to, this EULA, by signing this EULA if Incyte or its authorized reseller has presented the EULA for signature. The Platform license stated below extends only to the entity that is a party to this EULA and not to that entity’s affiliates.

Capitalized terms used in this EULA are defined in the Section where they are first used or are defined in Section 21 (Definitions) below.

1. **Platform.** The “Platform” is Incyte’s generally available commercial release of Incyte HUNT comprised of: (i) the on-premises HUNT and survey module software to be deployed on the Ordering Activity’s network, (ii) the Incyte-hosted Incyte Cloud Service, and (iii) Documentation, collectively, as it may be updated by Incyte. Ordering Activity may use the Platform for the Subscription Term defined in Ordering Activity’s Order, subject to the terms, conditions, and restrictions stated in this EULA. Ordering Activity’s “Subscription” includes the rights (i) to use the Platform for the Subscription Term and (ii) to receive Support.

2. **Subscription Term.** Ordering Activity may use the Platform for the Subscription Term. The initial Subscription Term is stated in the Order. The Subscription Term begins on the day that Incyte makes the Platform accessible to Ordering Activity by providing Ordering Activity with access codes and other information that enables Ordering Activity to download the HUNT software and remotely access the Incyte Cloud service. Orders do not automatically renew. If Ordering Activity has not purchased a Subscription renewal before the expiration of a Subscription Term, the Order expires and Incyte has no further obligation to provide the Subscription. If Ordering Activity adds Endpoints to Ordering Activity’s Subscription during a Subscription Term, the Subscription Term for the additional Endpoints is coterminous with the then-current initial or renewal Subscription Term of the original Subscription Order.

3. **Payment.** In consideration for the rights granted under Ordering Activity Subscription, Ordering Activity agree to pay all fees specified in Ordering Activity’s Order within 30 days of invoice, or as otherwise specified in the applicable Purchase Order.

4. **Support.** Support includes assistance to Ordering Activity in connection with Ordering Activity’s use of the Platform, and updates to the Platform software to fix bugs, correct errors, or enhance functionality that Incyte releases on a generally available commercial basis to all subscribers of a Platform product without additional charge. Incyte Support plans are limited to correcting errors, bugs or other issues with the Platform and do not extend to any Third Party Products or technologies Ordering Activity use with the Platform, any issues arising from modifications to the Platform not made or authorized by Incyte, or the use of the Platform other than as authorized by this EULA. If Ordering Activity requests Support that is not covered by Ordering Activity’s Support plan, Incyte may invoice Ordering Activity at its then-current GSA Schedule time and materials rates in connection with the request, provided that Incyte informs Ordering Activity that Ordering Activity will incur charges promptly on learning that the request is not covered by Ordering Activity’s Support plan.

5. **Incyte Cloud Service.** The Incyte Cloud Service element of the Platform will generally be available to Ordering Activity 24 hours per day, 7 days per week, except that Incyte may disable access to the Incyte Cloud Service as necessary to perform maintenance. Incyte will use commercially reasonable efforts to perform maintenance after 5:00 p.m. and before 6:00 a.m. or after 5:00 p.m. Friday and before 6:00 a.m. Monday, United States Central time (GMT-6). Incyte will provide Ordering Activity with notice of maintenance start and completion via the customer portal or an email.

6. **Contact Person.** Ordering Activity must designate an employee or agent to act as the contact person for receiving and managing all communications between us related to Ordering Activity’s use of the Platform. Ordering Activity may change Ordering Activity’s contact person upon written notice to Incyte.

7. **Security.** Incyte will provide Ordering Activity with information necessary to access and use the Platform. Ordering Activity must use reasonable care to protect the confidentiality of Ordering Activity’s access information, and Ordering Activity is solely responsible for any use of the Platform that is enabled by means of Ordering Activity’s access information, even if the use is unauthorized. Ordering Activity
must notify Infocyte immediately if Ordering Activity believes the confidentiality of Ordering Activity's access information has been compromised. Infocyte will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Platform. On Ordering Activity’s request, Infocyte will provide Ordering Activity with a description of its security measures for the Platform (the “Security Documentation”). Ordering Activity acknowledges that the Security Documentation is sensitive confidential information of Infocyte and agrees that Ordering Activity will not disclose the Security Documentation to any third party or use the Security Documentation for any purpose other than evaluating the security of the Platform. Ordering Activity, and not Infocyte, is responsible for deciding if Infocyte’s security measures meet Ordering Activity’s requirements in light of Ordering Activity’s business goals and any laws or regulations applicable to Ordering Activity’s business. Ordering Activity agrees that Infocyte is not responsible for any harm Ordering Activity may suffer as a result of a security incident arising from Ordering Activity’s use of the Platform unless the incident resulted from Infocyte’s failure to properly implement and maintain the security measures described in its Security Documentation.

8. Platform License and Restrictions. Ordering Activity may use the Platform to assess the number of Endpoints for which Ordering Activity has purchased a Subscription. Ordering Activity may use the Platform only for Ordering Activity’s internal business purposes and not as part of a services offering to any third parties. Ordering Activity may use software provided to Ordering Activity as part of the Platform only in its executable form. Ordering Activity may not transfer or sublicense the Platform to, or make the Platform available for use by, any person except Ordering Activity’s employees and Ordering Activity’s permitted contractors as described in Section 17 (Assignment, Contractors). Ordering Activity may deploy as many survey modules as reasonably incident to Ordering Activity’s licensed use, and Ordering Activity may make a reasonable number of backup or archival copies of the analytics engine, but Ordering Activity may not otherwise copy the Platform. The survey modules are designed to be self-deleting, but in the event a survey module does not self-delete, Ordering Activity must delete the module on completion of the assessment for which the module was deployed. Ordering Activity may not use the Platform in connection with any activity where the failure of the Platform might result in death, personal injury or severe physical or environmental damage, such as controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, and weaponry systems. Ordering Activity’s license is worldwide, subject to applicable export laws. Ordering Activity’s license is nonexclusive. Ordering Activity may not modify the Platform or create any derivative works of the Platform. Ordering Activity may not reverse engineer, disassemble or decompile the Platform except as permitted by applicable law notwithstanding this restriction, and then on advance written notice to Infocyte of at least 30 days. Ordering Activity may not publish any benchmark or other performance test results regarding the Platform. Ordering Activity may not remove any copyright, trademark, or other proprietary notices that appear on or with the Platform. The Platform may include software that is licensed under open source licenses. License terms, notices, attributions and other information about the open source elements of the Platform are available in the licensing file distributed with the Platform. If there is a conflict between this EULA and any open source license for software included in the Platform, the open source license will control.

9. Third Party Products. Any Third Party Products provided by Infocyte are subject to the terms of the license and other agreement terms of the third party provided to Ordering Activity by Infocyte or accompanying the Third Party Product. Specifically, but without limitation, all operating system, virtualization and other general systems software is a Third Party Product subject to separate licensing terms, conditions and restrictions of the third party providers. For example, Ordering Activity’s use of Windows Server software or other Microsoft software is subject to the Microsoft Corporation’s license terms. Ordering Activity may be required to accept the end user license and other terms of the third party providers as a condition to Ordering Activity’s use of the Third Party Products.

10. Records and Verification. Ordering Activity must keep complete and accurate records regarding Ordering Activity’s use of the Platform, and Ordering Activity may not delete or obscure any information regarding the use of the Platform that is generated by the Platform. On Infocyte’s request, Ordering Activity will provide reasonable information to evidence Ordering Activity’s use of the Services in compliance with this EULA and each Order, certified as “true, complete and correct” by Ordering Activity’s chief financial officer. In addition, Infocyte may perform an audit of Ordering Activity’s records, either onsite, or by means of remote access, on ten days advance written notice, provided that the audit must be conducted during normal business hours and may not unreasonably interfere with Ordering Activity’s normal business operations. Such audit shall also be in accordance with the applicable Government security requirements.

11. Reserved.

12. Malware Risk. Ordering Activity’s use of the Platform may reveal Malware on Ordering Activity’s systems, and the Platform may recover and retain a copy in an inert state for evidence retention. The removal or transfer of Malware may introduce additional risks to Ordering Activity’s network. Ordering Activity assumes all risk and responsibility for the possession, handling and use of Malware identified by, or exported from, the Platform.

13. Termination. On termination of the EULA, Ordering Activity must uninstall all Platform elements from Ordering Activity systems and destroy or render them unusable. On Infocyte’s request, Ordering Activity will certify in writing that Ordering Activity has complied with this Section. Those terms of this EULA that are intended by their nature to survive expiration or termination of this EULA shall survive expiration or termination.

14.1 Warranties. Infocyte warrants that (i) the Incyte Cloud Service elements of the Platform will be available to Ordering Activity without material interruption, except for scheduled or emergency maintenance; (ii) it will use commercially reasonable efforts to update the Incyte Cloud Service with new threat information as it becomes available; and (iii) its support personnel will use commercially reasonable efforts to resolve any Support issue within the target resolution times stated in the Support plan. If the Platform or Services fail to conform to the applicable warranty, Infocyte’s sole obligation, and Ordering Activity’s sole and exclusive remedy, is: (i) if the failure is curable, Infocyte’s cure of the failure in a commercially prompt manner, or (ii) if the failure is not curable, Infocyte’s refund of the fees paid for the non-conforming part of the Services, or for Ordering Activity’s use of the Platform during the period of nonconformance.

14.2 Warranty Exclusions. Infocyte’s warranty is void as to Ordering Activity’s use of the Platform other than as permitted by this EULA or in a manner not contemplated by the Documentation. The warranty is void as to any version of the Platform if Ordering Activity has not implemented each Infocyte maintenance release for the analytics engine within 45 days of the date that the release is made available to Ordering Activity. Ordering Activity acknowledges that Infocyte is not responsible for the security of Ordering Activity’s network generally, and that Infocyte does not represent or warrant that the Platform meets Ordering Activity’s particular security requirements or the requirements of any laws or regulations governing Ordering Activity’s operations.

14.3 Warranty Disclaimer. Except as expressly stated in this Section, Infocyte makes no representation or warranty whatsoever regarding the Platform, and the Platform is provided AS IS. Infocyte makes no representation or warranty whatsoever regarding any Third Party Products, and as between Ordering Activity and Infocyte any Third Party Products are provided AS IS. Infocyte does not warrant that the Platform will be error free or uninterrupted, or that the Platform will identify all threats present on Ordering Activity’s network. Infocyte disclaims any implied or statutory warranties, such as a warranty of merchantability, fitness for a particular purpose, and noninfringement, and disclaims any warranty that may arise from a course of dealing. Any warranty that cannot be excluded under applicable law is limited in duration to 30 days from the event giving rise to the warranty.

15. Reserved.

16. Indemnification. Infocyte shall defend and hold Ordering Activity harmless from any claim by a third party that the Platform infringes any United States patent, trade secret or copyright of that third party, provided that Ordering Activity (i) notify Infocyte promptly in writing of any such allegation or claim, (ii) reasonably cooperate with Infocyte to settle or defend such allegation or claim, and (iii) grant Infocyte authority and control of the defense or settlement of such allegation or claim to the extent permitted under 28 U.S.C. 516. Notwithstanding the foregoing, Infocyte shall have no obligations under this Section to the extent any infringement allegation or claim is based upon or arises out of (i) any modification or alteration to the Platform not approved in writing by Infocyte, (ii) any combination or use of the Platform with products or services not supplied by Infocyte or approved in writing by Infocyte in advance of such combination, or (iii) use of the Platform not in accordance with applicable Documentation provided by Infocyte or outside the scope of the rights granted under this EULA.

17. Assignment, Contractors. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld). Ordering Activity may not allow any person to use the Platform other than: (i) Ordering Activity’s employees and individual contractors acting under Ordering Activity’s direct supervision, and (ii) the personnel of outsourcers who are performing an internal business function for Ordering Activity and on the condition that the outsourcer has expressly agreed that its use of the Platform is subject to this EULA. Ordering Activity remains responsible for Ordering Activity’s contractors and outsourcers’ use of the Platform in violation of the terms of this EULA. Infocyte may use subcontractors to perform its obligations under this EULA.

18. Rights in Data. Ordering Activity retains all right, title and interest in and to Ordering Activity’s Data. Infocyte will use Ordering Activity’s Data solely for the purpose of providing the Services. Ordering Activity acknowledges that the Platform collects a broad range of system information. The Platform does not target the collection of data stored on or processed by means of the systems assessed, but may unavoidably capture this type of data. Infocyte will not use this data for any purpose and will use reasonable means to protect the security of this data. If Infocyte discovers that it has captured more than an incidental amount of this type of data, Infocyte will inform Ordering Activity and will destroy the data.

19. Rights in Intellectual Property. Except for the license rights expressly stated in this EULA, Infocyte and its licensors retain all right, title and interest in and to the Platform and all related intellectual property, including all Infocyte trademarks. Ordering Activity’s license confers no title or ownership in the Platform and is not a sale of any rights in the Platform. If you provide any feedback, comments, or suggestions for the improvement of the Platform or any other Infocyte products or services (“Suggestions”), you hereby license the Suggestions and all related intellectual property to Infocyte on a non-exclusive, worldwide, fully paid, perpetual, irrevocable basis for Infocyte to use, disclose, modify, reproduce, license, distribute, commercialize and otherwise freely exploit without restriction of any kind, without right of accounting except as limited in advertising under GSAR 552.203-71. Ordering Activity acknowledges that data
generated by Ordering Activity’s use of the Services is not Ordering Activity’s Data, and that Infocyte may use this data for the purpose of improving its Platform and operations generally and as indicated in Section 18, so long as such use does not entail the disclosure of any information that would identify Ordering Activity or any individual in relation to the data.

20. **Export Compliance.** The Platform may be subject to export laws and regulations of the United States and other jurisdictions. Ordering Activity may not permit users to access or use the Platform in a U.S. embargoed country or in violation of any U.S. export law or regulation, or in a manner that causes Infocyte to be in violation of U.S. export laws, even if the use is permitted under the laws applicable to Ordering Activity or the user. Each party represents that it is not on any restricted persons list maintained by the U.S., Canada, or any member of the European Union. “Export laws” include the U.S. Export Administration Regulations (Title 15 of the U.S. Code of Federal Regulations Part 730 et seq.), International Traffic in Arms Regulations (Title 22 of the U.S. Code of Federal Regulations Parts 120-130), the economic sanctions rules and regulations implemented under statutory authority and/or President’s Executive Orders and administered by the U.S. Treasury Department’s Office of Foreign Assets Control (Title 31 of the U.S. Code of Federal Regulations Part 500 et seq.), the EU’s restrictive measures as published on the website of the European External Action Service, and the applicable export laws of any other jurisdiction.

21. **Definitions.** Infocyte means Infocyte, Inc., a Delaware corporation; Documentation means the commercially available, general release version of materials describing the Platform or its use, whether in print or digital form. Examples of Documentation are user manuals, administration guides, installation guides, training manuals, white papers, specifications, designs, test plans and test results, configuration guides, reference architectures, FAQs, and issues documentation. Documentation does not include any advertising or marketing materials; Endpoint means a network endpoint, such as a workstation or server. Virtual servers, virtual desktops and other logically distinct endpoints are each an “Endpoint;” Malware means any virus, malware, spyware, ransomware, adware, or other code or information that is designed to interrupt the normal use of an information system, or destroy or corrupt any data, or covertly transmit information; Order means the written order signed and submitted by Ordering Activity to the Infocyte authorized reseller (or to Infocyte as applicable) that lists the Platform subscription products and Support plan, fees, use limitations, and other transaction terms (which, in the event of any conflict with any term of this EULA, shall prevail over this EULA); Results means information or output that results from the use of the Platform, such as scan results, reports, and raw data, in any form, and on any media that they may be captured, recorded or communicated; Services means any services that Infocyte has agreed to provide under this EULA; Support has the meaning given in Section 4 (Support); Third Party Product(s) means any software, services, goods or other products or technology that are provided to Ordering Activity by a third party, or that are provided by Infocyte but are: (i) covered by an open source license, or (ii) identified by Infocyte with a brand name or logo that is not an Infocyte brand name or logo, or (iii) provided subject to Ordering Activity’s agreement to the third party’s legal terms and conditions; Ordering Activity’s Data means the data stored on or processed by or through Ordering Activity’s information technology systems that are assessed by Infocyte as part of the Services, including (i) personally identifiable information, health information, financial data or other information regarding Ordering Activity’s customers, suppliers, insureds, and end users, (ii) Ordering Activity’s financial data, and (iii) Ordering Activity’s other business use data.

22. **Government Customers.** If Ordering Activity is a government agency, Ordering Activity acknowledges that the Platform and related software has been developed at private expense and is provided with **RESTRICTED RIGHTS.**

23. **Law.** This agreement shall be governed by the Federal laws of the United States. This EULA, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s) is the complete and exclusive agreement between Ordering Activity and Infocyte and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding, written or oral.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Intercede Group ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific Terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**INTERCEDE GROUP**

**INTERCEDE GROUP LICENSE, WARRANTY AND SUPPORT TERMS**

1. **Definitions.**

   (A) **Reserved.**

   (B) “Documentation” means the manuals, handbooks and other written materials related to the use of the MyID Products, whether in hard copy or soft copy form, that Intercede provides and that customarily accompany the MyID Products.

   (C) “MyID Products” mean the MyID Software and Documentation provided to Customer under this Agreement.

   (D) “MyID Software” means the software licensed by Customer under this Agreement, consisting of a series of instructions or statements in machine-readable, object code form only.

2. **License.**

   (A) **License for MyID Software.** Intercede hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable license to use the MyID Software in accordance with the instructions contained in the Documentation. Customer may make a reasonable number of copies of (1) the MyID Software for backup, testing, disaster recovery or archival purposes only and (2) the Documentation for its internal use only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the MyID Software and Documentation and does not remove any such marks from the original.

   (B) **Restrictions on License for MyID Software.**

      (1) Incorporation of Restrictions in Invoice and Other Documents. Customer’s purchase order, sales quotation or invoice, or user license certificate for the MyID Products may contain limitations with respect to the number of users, servers, asserting and relying parties, functionality options and/or other restrictions. In such a case, such limitations and restrictions are incorporated herein by reference.

      (2) Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a “need to know” who are bound in writing by non-disclosure obligations suitable to protect Intercede’s interests in the MyID Software but no less restrictive than Customer’s obligations herein), (b) copying (except as set forth in Section 2(A) above), (c) disclosure to any third party of the results of any benchmarking or competitive analysis of the MyID Software that Customer may perform, or (d) sublicensing or other dissemination of the MyID Software, in whole or in part, to any third party without Intercede’s prior written consent.

      (3) Third Party Software. If the MyID Software contains or is bundled with third party software, then Customer may use such third party software solely (a) for the purpose such software is included with the MyID Software and (b) for use with the particular MyID Software that Customer has licensed from Intercede as set forth in the Documentation. Customer shall not use any third-party software embedded in or bundled with the MyID Software as a standalone program or in any way independently from the MyID Software.

      (4) No Modification of MyID Software. Customer shall not modify, enhance, translate, supplement, create derivative works from, reverse engineer, reverse compile or otherwise reduce the MyID Software to human readable form without Intercede’s prior written consent.

3. **Ownership and Intellectual Property Rights.**

   (A) **Ownership of MyID Products.** Intercede is the exclusive owner of the MyID Software and Documentation (including revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other intellectual property that Intercede may develop, conceive or deliver under this Agreement, including all patents, copyrights and other intellectual property rights thereto.

   (B) **Ownership of Trademarks.** By this Agreement, Customer acquires no rights of any kind in or to any Intercede trademark, service mark, trade name, logo or product designation and shall not make any use of the same for any reason except as expressly authorized by this Agreement or otherwise authorized in writing by Intercede. Customer shall cease to use in any manner such markings or any similar markings upon the expiration or termination of this Agreement.

4. **Reserved.**
5. Warranty.

(A) MyID Software Warranty. Intercede warrants that the MyID Software will operate in material conformance to the Documentation for such MyID Software during the first 90 days after Customer’s initial receipt of the MyID Software (the “Warranty Period”). Intercede does not warrant, however, that the MyID Software or any portion thereof is error-free. If Customer discovers a non-conformity in the MyID Software during the Warranty Period, then Customer shall submit to Intercede a written report describing the non-conformity in sufficient detail to permit Intercede to reproduce such non-conformity. If Intercede successfully reproduces the reported non-conformity and confirms that it is a non-conformity, then Intercede shall use reasonable efforts, at its option, to (1) correct the non-conformity, (2) provide a workaround or software patch (a “Fix”), or (3) replace the MyID Software. If Intercede determines that none of these alternatives is reasonably available, then, upon Customer’s request, Intercede shall refund any payments that Customer has made for the affected MyID Software and accept its return. This warranty applies only to the initial delivery of the MyID Software. All Fixes provided by Intercede constitute MyID Software hereunder and are governed by the terms hereof. Intercede warrants that each Fix will operate in material conformance to the Documentation for the applicable MyID Software during the first 30 days after Customer’s initial receipt of such Fix or during the remainder of the initial Warranty Period, whichever is greater.

(B) Limitations of Warranty. The foregoing warranties do not apply if (1) repair or replacement is required as a result of causes other than normal use, including, without limitation, repair, maintenance or modification of the MyID Products by persons other than Intercede authorized personnel; Customer’s accident, fault or negligence; operator error; Customer’s failure to incorporate any Fixes that Intercede makes available to Customer; use of the MyID Products other than as set forth in the Documentation; or causes external to the MyID Products such as, but not limited to, failure of electrical power or fire or water damage; or (2) the MyID Products are used with software or equipment other than that for which they were designed as set forth in the Documentation.

(C) WARRANTY DISCLAIMER. OTHER THAN INTERCEDE’S EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, INTERCEDE AND ITS LICENSORS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER’S SOLE REMEDY FOR BREACH OF SUCH EXPRESS LIMITED WARRANTIES IS A CORRECTION, FIX OR REFUND AS SET FORTH IN THIS SECTION 5.

6. Reserved.

7. Reserved.

8. Reserved.

9. Reserved.

1 INTRODUCTION

1.1 Purpose of the Service Level Agreement

This Service Level Agreement (SLA) provides an understanding of the service level expectation and defines a benchmark for measuring the performance of the service.

1.2 Service Level Agreement Period

This SLA will remain valid for a period specified on an ordering document.

2 Incident Reporting

All incidents must be reported through the Help/Support Desk. Support will only be available between 9.00 am and 5.00 pm EST during normal US working hours, excluding US public holidays. Support will only be given using the English language.

Any support required outside this agreement must be agreed separately and Intercede reserve the right to make a time and materials based charge for this support.

The help desk can be contacted via support@intercede.com. All requests for support must be made by agreed nominated contacts (NC) from within the ordering activity. There will be 2 valid nominated contacts that have appropriate knowledge of the Intercede product set. Ordering Activity can purchase the right to nominate more than 2 nominated contacts on a separate ordering document.

Prior to any call to the help desk, it is the nominated contacts responsibility to check all basic system pre-requisites as defined in the manual, including troubleshooting. Intercede reserve the right to make a charge for support calls that fall into this category, by not being fully pre-checked.
All requests for support must provide details of the Company Name, Product Name and version, System details and a description of the issue, and where appropriate system and product log files.

All support calls will be registered in a call logging system, assigned a severity code, and allocated a unique reference number. Nominated contacts will be advised of the unique reference number on receipt of the support call. This severity code would be determined by agreement between Intercede Ltd and the nominated contact. The call would then be managed to resolution by Intercede.

Any activities relating to each incident will be logged in the call logging system for monitoring and management reporting.

Once reported, all incidents will remain active, until ordering activity agrees to the successful resolution of the issue. At this stage the incident will be closed.

In the unlikely event that an on-site visit is required to resolve the support issue, Intercede reserve the right to make a charge for support and/or expenses dependent on the source of the issue.

2.1 Severity Codes

Severity - High
Critical part of system unavailable or major (or potentially major) impact on business.
Target response: 4hrs (and regular updates every hour) unless the call is placed after 4pm EST during the working day, in which case during the next working morning.

Severity - Medium
Part of system unavailable but non critical as the users can adapt business practices to get around the problem in the short term.
Target response: Same day unless call is placed after 10am EST, in which case next day.

Severity - Low
No immediate impact on business, inconvenient errors.
Target response: Next working day as agreed with the caller requesting support.

2.2 Incident Progressing

Each incident will remain with the support department who will update the status of the incident as each action is taken. Responsibility for the incident will remain with the Intercede Ltd support department to manage through to resolution to sign off by ordering activity.

Should further information be required the Intercede support department will contact the originator of the incident. If the originator contacts the Help/Support Desk with regard to a specific incident, the incident reference number must be quoted.

2.3 Escalation Procedures

Best endeavours will be made to answer calls effectively and it is expected that the customer will provide all such details as are requested by Intercede to help to resolve the given issue. Intercede will process each call log to a completion agreed with the customer.

If the incident is not responded to within the agreed times specified against severity (as in 2.1), ordering activity may initiate the relevant escalation procedure.

The levels of escalation would be agreed and will typically be:

<table>
<thead>
<tr>
<th>Severity</th>
<th>Intercede</th>
<th>Ordering Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Level 2 (When)</td>
<td>Level 3 (In 4 hours)</td>
</tr>
<tr>
<td>Medium</td>
<td>Level 2 (Within 1d)</td>
<td>Level 3 (Within 5d)</td>
</tr>
<tr>
<td>Low</td>
<td>Level 2 (Within 5d or As agreed)</td>
<td>Level 3 (Within 5d)</td>
</tr>
</tbody>
</table>

The levels assigned to the functions above are used in the escalation procedures shown below:

Severity - High
Level 2 When incident reported
Level 3 Within 4 hours

Severity - Medium
Level 2 Within 1 day
Level 3 Within 5 days

Severity - Low
Level 2 Within 5 days or As agreed

NOTE: Both Intercede and ordering activity will be responsible for communicating to the appropriate personnel within their respective organisations should escalation be necessary.
3 Problem Management

The Intercede Help/Support Desk would monitor incidents using response and resolution targets.

Response means the support team acknowledging receipt of the incident to the ordering activity nominated contact, agreeing the severity of the call, requesting further information as necessary, and conducting an initial investigation into the incident.

Resolution means providing an agreed solution to the problem. This could take the form of a short-term work around to meet the immediate need, or an agreement that the problem will be resolved in the next product release.

Intercede can ‘stop the clock’ while awaiting action or information (such as log file) from ordering activity.

4 Reserved.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Ivanti (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA MAS contract. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable Remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**IVANTI**

**IVANTI LICENSE, WARRANTY AND SUPPORT TERMS**

**ATTACHMENT A - IVANTI END USER LICENSE, MAINTENANCE, AND SUPPORT SERVICES AGREEMENT**

1. **DEFINITIONS.**

   “Concurrent Users” means the maximum number of users that may concurrently use or access the Licensed Software.

   “Documentation” means the user documentation IVANTI provides with the Licensed Software.

   “Infringement Claim” means a claim by a non-affiliated third party against Ordering Activity asserting that Ordering Activity’s use of Licensed Software in accordance with this Agreement violates that third party’s patent, trademark, or copyright rights.

   “IVANTI” means:

   - Ivanti U.K. Limited, an English company, if Ordering Activity is purchasing any Licensed Software other than Wavelink or Naurtech branded Licensed Software and has its primary office located outside of North America, Central America, South America (excluding Brazil), (collectively, the “Americas”), Japan or the People’s Republic of China.

   - Ivanti International Limited, an Irish company, if Ordering Activity is purchasing Wavelink or Naurtech branded Licensed Software and has its primary office located outside of the Americas), Japan or the People’s Republic of China.

   - Ivanti, Inc., a Delaware corporation, if Ordering Activity has its primary office located in the Americas.

   - Ivanti, Inc., a Brazilian company, if Ordering Activity has its primary office located in Brazil.

   - Ivanti Software K.K., a Japanese company, if Ordering Activity has its primary office located in Japan.

   - Ivanti (Beijing) Information Technology Co., Ltd., a Chinese company, if Ordering Activity has its primary office located in the People’s Republic of China.

   “Licensed Software” means the software, in object code form, and any Documentation accompanying this End User License Agreement (EULA) or the software.

   “Ordering Activity” means the person or entity licensing the Licensed Software from IVANTI pursuant to this EULA.

   “Maintenance” means IVANTI’s provision of Updates and Upgrades to the applicable Licensed Software.

   “Node” means each electronic device using the Licensed Software including without limitation (a) a physical device such as a computer, handheld device, workstation, console, Seat, server, or any other electronic device; (b) a virtual machine, such as an operating environment that may be running concurrently with another operating environment on a single physical device; or (c) for the IVANTI Antivirus for Mail Servers product, an electronic or virtual mailbox (e.g., a mailbox for email).

   “Node Count Data” means information periodically generated by the Licensed Software about (a) the quantity and type of current usage of the Licensed Software on a server, and (b) the non-personal, encrypted hardware configuration of that server.

   “Seat” means the number of Concurrent Users authorized to use the Licensed Software.


   “Update” means content used to update the License Software and includes bug fixes, minor enhancements and patches, but does not include Upgrades.
“Upgrade” means a new version of Licensed Software that replaces a pre-existing version of such Licensed Software.

“User” means a natural person employed by or who otherwise provides services (whether as an independent contractor or otherwise) to Ordering Activity who is supported with or uses the Licensed Software.

2. LICENSES. The licenses that are available from IVANTI include, without limitation, the following:

(A) FULL-USE LICENSE: A “Full-Use License” is a non-exclusive, non-transferable, perpetual, and limited license to copy, install and use the Licensed Software within Ordering Activity’s organization on the total number of Nodes set forth in the purchase order. A Full-Use License does not include Maintenance or Support Services. Maintenance and Support Services must be purchased in addition to the Full-Use License.

(B) SUBSCRIPTION LICENSE: A “Subscription License” is a non-exclusive, non-transferable, timelimited license to copy, install and use certain Licensed Software within Ordering Activity’s organization on the total number of Nodes set forth in the purchase order. Unless a different term is specified in the purchase order to IVANTI, the term of Subscription License or renewal thereof is one (1) year. During the term of the time-limited subscription, Ordering Activity is entitled to receive Maintenance for the Licensed Software (additional Support Services also may be available for purchase by Ordering Activity). If the Subscription License is provided as software as a service (SaaS), the terms and conditions found at www.ivanti.com/saas/termsandconditions/ shall also apply in addition to the terms and conditions contained within this EULA.

(C) USER-BASED LICENSE: A “User-Based License” is a non-exclusive, non-transferable, perpetual, and limited license to copy, install and use the Licensed Software within Ordering Activity’s organization to support the total number of Users set forth in the purchase order. A User-Based License does not include Maintenance or Support Services. Maintenance and Support Services must be purchased in addition to the User-Based License.

3. LICENSEGRANT. IVANTI hereby grants Ordering Activity a non-exclusive, non-transferable, restricted license to use the Licensed Software in accordance with the type of license and subject to the quantity of Nodes purchased by Ordering Activity. Ordering Activity may make a copy of the Licensed Software only as needed for archival and backup purposes. Ordering Activity may permit third party consultants and contractors (such as third-party supplier(s) of information services) to use the Licensed Software on Ordering Activity’s behalf provided that (a) all such use is in accordance with the terms and conditions of this EULA, and (b) Ordering Activity assumes full responsibility and liability for any use of the Licensed Software by such third parties in any violation of this EULA, including without limitation use in excess of the licensed number of Nodes. Ordering Activity agrees not to override or bypass any activation process or any security feature, authorization, activation, or reactivation of the Licensed Software or to assist others in doing the same.

4. NODE COUNT VERIFICATION AND AUDIT. Ordering Activity agrees that IVANTI may periodically verify that Ordering Activity’s usage of the Licensed Software does not exceed the quantity of Nodes or User-Based Licenses purchased, subject to applicable Government security requirements. Periodically, the Licensed Software on each server will generate Node Count Data. Each time the Licensed Software generates Node Count Data on a server, Ordering Activity agrees to send, within thirty (30) days of generation, the Node Count Data to IVANTI either automatically by the Internet or manually by email. If the node count verification process shows that Ordering Activity, including its third party consultants or contractors using the Licensed Software for Ordering Activity, is using more than the number of Nodes or other Licensed Software for which licenses have been purchased, IVANTI shall invoice Ordering Activity for such additional Nodes and/or Licensed Software at the then-current GSA Schedule price. Ordering Activity agrees not to override or bypass this node count verification process or assist others to do the same. With respect to User-Based Licenses, Ordering Activity agrees to provide IVANTI with documentation evidencing the total number of Users within thirty (30) days of IVANTI’s request.

5. USE RESTRICTIONS. IVANTI reserves all rights not expressly granted to Ordering Activity herein. Without limiting the generality of the foregoing, Ordering Activity shall not and shall not allow others to: (a) copy, modify, adapt, rent, lease, sell, distribute, export, re-export, assign, sublicense, translate, transfer, or reprogram the Licensed Software or any portion thereof except as provided in this EULA; (b) use the Licensed Software in a service bureau, facility management, service provider, timeshare, or other similar type of environment, (c) reverse engineer, decompile, translate, merge, or disassemble the Licensed Software; (d) create derivative works based upon the Licensed Software; (e) use the Licensed Software to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory, or to perform any activity which breaches the rights of any third party; (f) take any actions that would cause the Licensed Software to become subject to any open source or quasi-open source license agreement not otherwise applicable; or (g) transfer any Licensed Software or Ordering Activity’s license rights under this EULA, in whole or in part without IVANTI’s prior written consent, which consent shall not be unreasonably withheld or denied.

THE LICENSED SOFTWARE IS NOT INTENDED OR LICENSED FOR AND ORDERING ACTIVITY SHALL NOT USE THE LICENSED SOFTWARE IN ANY ENVIRONMENT IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

6. OWNERSHIP OF LICENSED SOFTWARE. The Licensed Software is the proprietary property of IVANTI or its licensors. No title to or ownership of any Licensed Software is transferred to Ordering Activity. The Licensed Software is licensed to Ordering Activity, not sold. All rights, title and interest in and to the Licensed Software (including any Update or Upgrade thereto), including all worldwide intellectual property rights, shall remain with IVANTI, its licensors, vendors and/or suppliers, as the case may be. Except as otherwise
expressly provided, IVANTI grants no express or implied right under any IVANTI patent, copyright, trademark, or other intellectual property right.

7. COPYRIGHTS, TRADEMARKS, AND PATENTS. The Licensed Software is copyrighted and protected by the laws of the United States and other countries, and by international treaty provisions combined with patents and trademarks. In no circumstance may Ordering Activity remove or alter the copyright notice, trademark notice, or other proprietary notices from the Licensed Software. Ordering Activity agrees to faithfully reproduce and include all copyrights, trademarks, and other proprietary notices on any authorized copy of any Licensed Software. IVANTI is either a registered trademark or trademark of IVANTI, Inc. or its affiliates in the United States and/or other countries. One or more patents, as well as other patent pending technology, may apply to Licensed Software.

8. MAINTENANCE AND SUPPORT SERVICES. Nothing in this Agreement entitles Ordering Activity to any Support Services and/or Maintenance of the Licensed Software without purchasing such Support Services and/or Maintenance.

(A) MAINTENANCE: During the term for which Ordering Activity has purchased the applicable Maintenance or subscription for the Licensed Software, Ordering Activity is entitled to Updates and Upgrades as and when they are made generally available to IVANTI’s end users.

(B) SUPPORT SERVICES: During the term for which Ordering Activity has purchased the applicable support, Ordering Activity is entitled to support in accordance with IVANTI’s points-based support programs. Points expire at the end of each Support Services period and new points are calculated each renewal period. Support levels may be adjusted any time Ordering Activity purchases additional Support Services. For more information on the Ivanti support programs, see the Ivanti service portal at http://www.ivanti.com/en-US/company/legal/support-terms.

(C) NO OBLIGATION. IVANTI shall be under no obligation to furnish Maintenance and/or Support Services for the Licensed Software to the extent that such Maintenance and/or Support Services are necessary or desired as a result of: (i) the operation of the Licensed Software in environmental conditions or configurations outside those prescribed in the Documentation; (ii) Ordering Activity’s failure to upgrade and update the Licensed Software to the currently supported versions of the Licensed Software or to maintain the Licensed Software in accordance with the standards of Maintenance prescribed in the Documentation or as specified in Maintenance or Support Services received by Ordering Activity from IVANTI; (iii) actions of any third party other than IVANTI or a third party authorized by IVANTI; and (iv) causes unrelated to the Licensed Software as delivered to Ordering Activity by IVANTI, including without limitation, modifications to the Licensed Software made by Ordering Activity or on Ordering Activity’s behalf.

9. THIRD-PARTY SOFTWARE. The Licensed Software may be bundled with non-integrated hardware or other software programs licensed or sold by a licensor other than IVANTI. IVANTI DOES NOT WARRANT SUCH THIRD-PARTY PRODUCTS. Any and all such third-party products (e.g., drivers, utilities, operating system components, etc.) which may be distributed with the Licensed Software are provided “AS IS” without warranty of any kind, whether express or implied. Use of Microsoft's DCOM software, distributed with the Licensed Software, is conditioned upon Ordering Activity having a valid licensed copy of the applicable Microsoft operating system software on the computer on which the DCOM software is installed. Nothing in this EULA shall restrict, limit or otherwise affect any rights or obligations Ordering Activity may have, or conditions to which Ordering Activity may be subject, under any applicable open source licenses to any open source code contained in any Licensed Software. IVANTI makes no warranty that third-party software which Ordering Activity seeks to access using the licensed software shall be available for downloading to Ordering Activity’s system.

10. LIMITED WARRANTY. IVANTI WARRANTS THAT FOR A PERIOD OF NINETY (90) DAYS FROM ORDERING ACTIVITY’S INITIAL ACQUISITION OF A LICENSE TO USE THE LICENSED SOFTWARE, THE LICENSED SOFTWARE WILL FUNCTION SUBSTANTIALLY IN CONFORMANCE WITH THE DOCUMENTATION ACCOMPANYING SUCH LICENSED SOFTWARE WHEN USED IN ACCORDANCE WITH THE ACCOMPANYING DOCUMENTATION. ORDERING ACTIVITY’S SOLE REMEDY FOR A BREACH OF THIS WARRANTY SHALL BE THAT IVANTI, IN ITS REASONABLE DISCRETION, WILL EITHER: (i) RESOLVE THE NONCONFORMITY, (ii) REPLACE THE LICENSED SOFTWARE WITH SOFTWARE OF SUBSTANTIALLY THE SAME FUNCTIONALITY, OR (iii) REFUND THE LICENSE FEES PAID BY ORDERING ACTIVITY FOR THE APPLICABLE LICENSED SOFTWARE. THIS LIMITED WARRANTY SHALL NOT APPLY TO UPDATES AND UPGRADES (IF ANY) TO THE LICENSED SOFTWARE OR IF ORDERING ACTIVITY HAS OBTAINED A TRIAL-USE LICENSE.

11. NO OTHER WARRANTIES. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, THE LICENSED SOFTWARE, MAINTENANCE AND SUPPORT SERVICES ARE PROVIDED “AS IS”, WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ANY EXPRESS WARRANTY MADE OUTSIDE OF THIS EULA IS EXCLUDED AND SUPERSEDED. NEITHER IVANTI NOR ITS LICENSORS REPRESENT OR WARRANT THAT THE LICENSED SOFTWARE WILL SATISFY ORDERING ACTIVITY’S REQUIREMENTS OR THAT THE LICENSED SOFTWARE IS WITHOUT DEFECT OR ERROR OR THAT OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE. ORDERING ACTIVITY MAY HAVE OTHER WARRANTY RIGHTS PROVIDED BY LOCAL LAW.

12. INDEMNIFICATION.

(A) INDEMNIFICATION BY IVANTI: IVANTI will, at its own expense, defend or settle any Infringement Claim and indemnify Ordering Activity for any damages finally awarded against Ordering Activity, but only if: (i) Ordering Activity promptly notifies IVANTI of any
Infringement Claim; (ii) IVANTI retains control of the defense, negotiations, settlement, or compromise of any Infringement Claim; and (iii) Ordering Activity provides IVANTI with all necessary authority, information, and reasonable assistance (at IVANTI’s expense). IVANTI will not be responsible for any costs, expenses or compromise incurred or made by Ordering Activity without IVANTI’s prior written consent. If use of Licensed Software is permanently enjoined as the result of an Infringement Claim, IVANTI will, in its sole discretion and expense, procure for Ordering Activity the right to continue using such Licensed Software, replace such Licensed Software with non-infringing product, modify such Licensed Software so that it is no longer infringing, or, if each of the foregoing is commercially unreasonable or unduly burdensome, IVANTI may elect to refund to Ordering Activity the fees, less depreciation, received by IVANTI for such enjoined Licensed Software. Depreciation shall be determined using a straight line basis over thirty-six (36) months, commencing on the effective date for IVANTI Licensed Software and on the date of first delivery to Ordering Activity of any Licensed Software or Support Services. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(B) EXCLUSIONS: IVANTI shall not have any indemnification obligations, other responsibility or liability for any costs, expenses, or damages, settlement, or otherwise resulting from: (i) IVANTI’s compliance with Ordering Activity’s designs, specifications or instructions; (ii) Ordering Activity’s modification (whether authorized or not) of Licensed Software; (iii) any Infringement Claim arising from Ordering Activity’s combined use of Licensed Software (or any part thereof) with any Ordering Activity or other third party product; or (iv) Ordering Activity’s direct or contributory infringement of any business method patent.

(C) ENTIRE OBLIGATION AND EXCLUSIVE REMEDY: The foregoing states the entire obligation and exclusive remedy of each of the parties hereto with respect to any IVANTI indemnification obligation.

13. TERMINATION OF THIS EULA. If Ordering Activity is using the Licensed Software under any timelimited license, including without limitation a Trial-Use License or Subscription License, this EULA shall terminate with regard to such Licensed Software without notice to Ordering Activity on the last day of the specified time period. Upon expiration or termination of this EULA, Ordering Activity shall immediately cease all use of the Licensed Software and uninstall and delete all of the Licensed Software.

14. EXPORT COMPLIANCE. Ordering Activity acknowledges that the Licensed Software is exported from the United States in accordance with the Export Administration Regulations. The Licensed Software, and any product or technical information provided by IVANTI, are subject to applicable import and export regulations of the United States and/or other countries. Diversion contrary to U.S. law is prohibited. Ordering Activity agrees to comply with all applicable import and export regulations as they may be amended from time to time. Regardless of any disclosure made by Ordering Activity to IVANTI of an ultimate destination of the Licensed Software or any product or technical information, Ordering Activity agrees that it will not export, re-export or disclose (directly or indirectly) any of the Licensed Software, any product or technical information provided by IVANTI, or any portion thereof, to any country, entity or person in violation of U.S. export laws or regulations or any other law, regulation, or Government order.

15. U.S. GOVERNMENT RESTRICTED RIGHTS. The Licensed Software is provided with “RESTRICTED RIGHTS” and is deemed “commercial computer software” and “commercial computer software documentation” within the meaning of applicable civilian and military Federal acquisition regulations and any supplement thereto. Use, modification, duplication, or disclosure by the United States Government is subject to restrictions as set forth in DFARS 252.227-7014(a)(1) (JUN 1995) (DOD commercial computer software definition), DFARS 227.7202-1 (DOD policy on commercial computer software), FAR 52.227-19 (DEC 2007) (commercial computer software clause for civil agency), DFARS 227.7015 (NOV 1995) (DOD technical data - commercial items clause); FAR 52.227-14, including Alternates I, II, and III (DEC 2007) (civilian agency technical data and noncommercial computer software clause); and/or FAR 12.211 and FAR 12.212 (commercial item acquisitions), and any successor provisions. Use of the Company Products by the U.S. Government constitutes acknowledgment of IVANTI’s proprietary rights therein. The Contractor or Manufacturer is IVANTI, Inc. (or its subsidiaries or affiliates), with an office at 698 West 10000 South, Suite 500, South Jordan, UT 84095, USA.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Keysight Technologies, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

KEYSIGHT TECHNOLOGIES, INC.
KEYSIGHT TECHNOLOGIES, INC. LICENSE, WARRANTY AND SUPPORT TERMS

IXIA BRANDED SOFTWARE END USER LICENSE AGREEMENT

This KEYSIGHT SOFTWARE END USER LICENSE AGREEMENT (this "Agreement") is a legal agreement between the undersigned Ordering Activity under GSA Schedule contracts ("Licensee" or "Ordering Activity") and Keysight Technologies, Inc. ("Keysight") for Keysight's ixia branded software product(s) identified in the related purchase order, including all associated media (collectively, the "SOFTWARE," as further defined below). By both parties executing this Agreement in writing, you are binding the business entity that you represent (i.e., Licensee) to the terms and conditions of this Agreement.

If Licensee does not agree to be bound by the terms of this Agreement, Licensee may not use the SOFTWARE in any way, and must promptly return the SOFTWARE (including, without limitation, any software media), unused, to Keysight.

1. KEYSIGHT PRODUCT

The "Keysight Product" may contain any combination of the following six categories of software:
(a) "Server Software" is software that is intended for use on a Keysight Ixia branded Hardware Chassis or other Keysight Ixia branded hardware product, and that provides certain services on that product.
(b) "Client Software" is software that is intended for use on a computer workstation, and that allows an end user to access and utilize the services of Server Software.
(c) "Console Software" refers to that portion of the IxChariot Software that is intended for use on a computer workstation, and that allows an end user to control Endpoint Software. For the avoidance of doubt, in no event shall Console Software be deemed to be Server Software or Client Software.
(d) "Endpoint Software" refers to the Performance Endpoint Software and/or the Qcheck Software.
(e) "License Management Software" is software that provides certain software license management services on a computer server.
(f) "GPL Software" consists of open source software as selected by Keysight for inclusion in the Keysight Product. GPL Software is not owned by Keysight. Notwithstanding anything in this Agreement to the contrary, GPL Software is distributed by Keysight to Licensee for Licensee’s use solely under the terms of the GNU General Public License, Version 2, June 1991, a copy of which is attached to this Agreement. The GNU General Public License governs the GPL Software and the copying, distribution, and modification of the GPL Software. GPL Software source code is available upon request, consistent with the requirements of the GNU General Public License.

2. GRANT OF LICENSE

Subject to the terms, conditions, and restrictions in this Agreement, Keysight grants to Licensee a non-exclusive, non-transferable, and non-sublicenseable license to (i) install and use the Server Software, the Client Software, the Console Software, the Endpoint Software and/or the License Management Software (collectively, and together with any copies thereof made in accordance with this Agreement, the "SOFTWARE") for which Licensee has paid or will pay to Keysight any required license fees, in object code form only, and (ii) use the provided end user documentation, whether printed or electronic (together with any copies thereof made in accordance with this Agreement, the "Documentation"), in support of Licensee’s use of the SOFTWARE. The license(s) granted above are subject to the following terms and conditions, as well as all other terms and conditions in this Agreement:
(a) Server Software. Any Server Software included in the SOFTWARE may be installed and/or used only on the particular Keysight Ixia branded Hardware Chassis or other Keysight Ixia branded hardware product for which such Server Software is designated.
(b) Client Software. Except as otherwise provided in the applicable Keysight invoice, any Client Software included in the SOFTWARE may be installed and/or used on an unlimited number of computer workstations. Such use is subject to any further restrictions in the applicable purchase order, including but not limited to any restrictions limiting the number of Client Software copies that can concurrently access and utilize the services of a particular copy of Server Software,
(c) Console Software. Except as otherwise provided below, any Console Software included in the SOFTWARE may be installed and/or used only on the number of designated computer workstations corresponding with the total number of licenses specified in the applicable Keysight invoice. Notwithstanding the foregoing, if Licensee has purchased one or more “floating licenses” for the IXChariot Software, then Licensee may install the corresponding Console Software on an unlimited number of computer workstations, but may only use concurrently the number of copies of such Console Software that is equal to the number of such “floating licenses” purchased by Licensee. Licensee’s use of Console Software is subject to any further restrictions in the applicable purchase order, including but not limited to any restrictions limiting the number of simultaneous tests that may be run with such Console Software.

(d) Endpoint Software. Notwithstanding anything in this Agreement to the contrary, Licensee may install and use the Endpoint Software on an unlimited number of computers and may make an unlimited number of copies of such SOFTWARE for backup and archival purposes.

(e) License Management Software. Any License Management Software included in the SOFTWARE may be installed and/or used only on the number of designated servers corresponding with the total number of licenses specified in the applicable purchase order.

(f) Updates and Releases. To the extent that, under the Keysight Limited Warranty or any Keysight Extended Warranty, Keysight provides Licensee with any revised, modified, or replacement SOFTWARE, or additional or supplemental SOFTWARE, or any updates, releases, error correction, or bug fixes related to the SOFTWARE, the same shall become part of the “SOFTWARE” licensed hereunder when delivered to Licensee and shall be subject to all of the terms and conditions contained herein. With respect to any technical information Licensee provides to Keysight in connection with the license(s) granted to Licensee hereunder, Keysight agrees that such technical information will be handled in accordance with any confidentiality agreements or data protection laws or regulations applicable to the information in a form that identifies Licensee.

(g) Media; License Keys. Licensee may receive the SOFTWARE in more than one medium, or Licensee may receive copies of the SOFTWARE that are compatible with operating systems not specified on the applicable Keysight quote. Regardless, Licensee may use the SOFTWARE only as expressly permitted in this Agreement. Licensee acknowledges and agrees that installation and/or use of certain SOFTWARE may be subject to activation by license key.

(h) Copies. Except as is otherwise expressly provided in this Agreement, Licensee may make only one copy of the SOFTWARE, and may use that copy only for backup and archival purposes. Licensee may copy the Documentation to the limited extent reasonably necessary to facilitate Licensee’s use of the SOFTWARE in accordance with this Agreement.

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(d) Open Source Software. Licensee hereby acknowledges that the SOFTWARE may utilize or include Open Source Software that may have specific license terms applicable to that Open Source Software (“Open Source License”) different from the terms of this Agreement. Open Source License terms are available at https://support.ixiacom.com/support-services/warranty-license-agreements or in other materials provided by Keysight. Any Open Source License associated with Open Source Software applies only to that Open Source Software and not the other software included in the SOFTWARE.

(e) Updates and Releases. To the extent that, the Limited Warranty and Technical Support Agreement (the “Limited Warranty Agreement”), Keysight or an affiliate provides Licensee with any revised, modified, or replacement SOFTWARE, or additional or supplemental SOFTWARE, or any updates, releases, error corrections, or bug fixes related to the SOFTWARE, the same shall become part of the “SOFTWARE” licensed hereunder when delivered to Licensee and shall be subject to all of the terms and conditions contained herein. With respect to any technical information Licensee provides to Keysight or an affiliate in connection with the license(s) granted to Licensee hereunder, Keysight may use such information for any purpose without restriction, including, without limitation, for product support and development. Keysight will not use such technical information in a form that identifies Licensee.

(f) Media: License Keys. Licensee may receive the SOFTWARE in more than one medium, or Licensee may receive copies of the SOFTWARE that are compatible with operating systems not specified on the applicable quote. Regardless, Licensee may use the SOFTWARE only as expressly permitted in this Agreement. Licensee acknowledges and agrees that installation and/or use of certain SOFTWARE may be subject to activation by license key.

(g) Copies. Except as is otherwise expressly provided in this Agreement, Licensee may make only one copy of the SOFTWARE, and may use that copy only for backup and archival purposes. Licensee may copy the Documentation to the limited extent reasonably necessary to facilitate Licensee’s use of the SOFTWARE in accordance with this Agreement.

(h) Reservation of Rights. Keysight reserves all rights not expressly granted herein.

3. TITLE; COPYRIGHT; PATENTS; NO SALE

(a) Ownership. Certain of the SOFTWARE may contain or be based upon software and/or other materials licensed to Keysight by third party licensors. Licensee acknowledges and agrees that the SOFTWARE (including but not limited to any proprietary protocols implemented therein) constitutes valuable trade secrets of Keysight, its affiliates, and/or its licensors (as applicable). Licensee further acknowledges and agrees that Keysight, its affiliates, and/or its licensors (as applicable) own all rights, title, and interest in and to the SOFTWARE and the Documentation (including, without limitation, any all copies, extracts, and associated media thereof, all concepts, logic, protocols, and specifications related thereto, and all images, “applets,” photographs, animations, video, audio, and/or text incorporated therein), as well as all patents, trademarks, trade names, inventions, copyrights, know-how, trade secrets, and other intellectual and industrial property rights, and any related applications or extensions, relating thereto or relating to the design, manufacture, operation, or service of the SOFTWARE.

(b) Copyright; Copies. Licensee acknowledges and agrees that the SOFTWARE and the Documentation is protected by United States copyright laws and international treaty provisions. Licensee must treat the SOFTWARE and the Documentation like any other copyrighted material and may only make copies as expressly permitted herein.

(c) Licensed Not Sold. Licensee acknowledges and agrees that the SOFTWARE and the Documentation has been licensed to Licensee pursuant to the terms and conditions of this Agreement and that neither the SOFTWARE nor the Documentation has been sold to Licensee.

4. RESTRICTIONS AND LIMITATIONS

(a) General Use Restrictions. Licensee shall not use, copy, merge, or transfer copies of the SOFTWARE or the Documentation except as may be expressly and specifically authorized in this Agreement. Licensee shall not knowingly take any action that would cause the SOFTWARE or the Documentation to be placed in the public domain.

(b) No Reverse Engineering: No Modification. Licensee may not, under any circumstances, reverse engineer, decompile, disassemble, or otherwise attempt to discover, reconstruct, or identify the source code for the SOFTWARE or any user interface techniques, algorithms, logic, protocols, or specifications included, incorporated, or implemented therein. Furthermore, Licensee may not, under any circumstances and except as expressly authorized by Keysight in the Documentation, modify, port, translate, or create derivative works of the SOFTWARE or the Documentation. The forgoing restrictions will not apply to the extent any such restriction is prohibited by applicable mandatory law or by licensing terms governing the use of open source components that may be included with the SOFTWARE.

(c) Rental: Leasing. Licensee may not, and agrees that it will not, transfer, assign, rent, lease, lend, resell, or in any way distribute or transfer any rights in this Agreement, the SOFTWARE, or the Documentation to third parties, including by operation of law, without Keysight’s prior written approval and subject to written agreement by the recipient to the terms of this Agreement.

(d) Export Restrictions: Compliance with Laws. Licensee agrees that Licensee will not, directly or indirectly, export or transmit the SOFTWARE or the Documentation to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce or such
other governmental entity as may have jurisdiction over such export or transmission. Licensee agrees to comply with and conform to all applicable laws, regulations, ordinances, and executive orders relating to Licensee’s use of the SOFTWARE and the Documentation.

5. USE AUDIT

Keysight shall have the right, upon reasonable notice and not more than once in a 12 month period, to conduct and/or have an independent accounting firm to conduct, during normal business hours on Licensee's premises under Licensee's reasonable supervision, an audit to verify Licensee’s compliance with the terms of this Agreement. Keysight or an independent accounting firm shall comply with all of Licensee’s security requirements prior to entering the premises or accessing Licensee’s systems.

6. TERM AND TERMINATION

(a) General. Except as provided below with respect to evaluation and limited term licenses, this Agreement and the license(s) granted herein will remain effective until terminated. Licensee may terminate this Agreement and the license(s) granted herein by ceasing all use of the SOFTWARE and the Documentation, and returning all copies of the SOFTWARE and the Documentation to Keysight. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Keysight shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(b) Evaluation and Term Licenses. If the SOFTWARE has been licensed to Licensee for evaluation purposes, then the term of this Agreement will continue only until the end of the designated evaluation period. If the SOFTWARE has been licensed to Licensee for a limited period as specified in the applicable purchase order, then the term of this Agreement will continue only until the end of that period. SOFTWARE that is subject to any evaluation or limited term license may contain code that can disable most or all of the features of such SOFTWARE upon expiration of such evaluation or limited term license, and unless Licensee has purchased from Keysight the applicable license fee for any additional licenses, Licensee shall have no rights to use the SOFTWARE or the Documentation upon expiration of any such license.

(c) Licensee Obligations Upon Termination or Expiration. Licensee agrees, upon any termination or expiration of this Agreement, to cease use of, and to destroy or return to Keysight, all copies of the SOFTWARE and any related Documentation. Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of this Agreement shall survive any expiration or termination of this Agreement for any reason and continue in full force and effect.

7. LIMITED WARRANTY, DISCLAIMER; LIMITATION OF LIABILITY

(a) LIMITED WARRANTY Keysight warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE LIMITED WARRANTY AGREEMENT ATTACHED HERETO, THE SOFTWARE AND THE DOCUMENTATION IS PROVIDED "AS IS", AND KEYSIGHT AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE SOFTWARE, THE DOCUMENTATION, AND/OR USE OF THE SOFTWARE OR THE DOCUMENTATION (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE SOFTWARE, THE DOCUMENTATION, OR ANY ELEMENTS THEREOF WILL ACHIEVE A PARTICULAR RESULT, OR WILL BE UNINTERRUPTED OR ERROR-FREE.

(b) LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL KEYSIGHT OR ITS LICENSORS BE LIABLE IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, THE DOCUMENTATION, AND/OR ANY USE OF THE SOFTWARE OR THE DOCUMENTATION, UNDER ANY THEORY OF LIABILITY, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF PROFITS, REVENUE, DATA, OR USE, OR FROM INTERRUPTED COMMUNICATIONS OR DAMAGED DATA, OR FROM ANY DEFECT OR ERROR, OR IN CONNECTION WITH LICENSEE'S ACQUISITION OF SUBSTITUTE GOODS OR SERVICES OR MALFUNCTION OF THE SOFTWARE OR THE DOCUMENTATION, OR ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR FROM NEGLIGENCE OR STRICT LIABILITY, EVEN IF KEYSIGHT OR ANY OF ITS LICENSORS OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY REMEDY TO ACHIEVE ITS INTENDED PURPOSE. FURTHER, IN NO EVENT SHALL KEYSIGHT'S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, THE DOCUMENTATION, AND/OR ANY USE OF THE SOFTWARE OR THE DOCUMENTATION EXCEED THE CONTRACT PRICE. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM Ixia’s NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

(c) KEYSYS LIMITED AND EXTENDED WARRANTIES. THE SOFTWARE IS LICENSED HEREUNDER SUBJECT TO ALL OF THE "OTHER LIMITATIONS" SET FORTH IN THE LIMITED WARRANTY AGREEMENT.

Responsibilities of Licensee. As a licensee of the SOFTWARE, Licensee is solely responsible for the proper installation and operation of the SOFTWARE in accordance with the instructions and specifications set forth in the Documentation. Keysight shall have no responsibility or
liability to Licensee, under the Limited Warranty Agreement or otherwise, for improper installation or operation of the SOFTWARE. Any output or execution errors resulting from improper installation or operation of the SOFTWARE shall not be deemed “defects” for purposes of the Limited Warranty Agreement

8. NON-DISCLOSURE

Licensee shall take all reasonable steps necessary to ensure that the SOFTWARE, the Documentation, and any related Keysight information, or any portion thereof, is not made available or disclosed by Licensee (or by any of its employees, representatives, or agents) to any person other than as may be necessary to Licensee’s employees, representatives, and agents to use the same as expressly permitted herein. Licensee agrees that all of its employees, representatives, and agents having access to the SOFTWARE and/or the Documentation shall observe and perform the terms of this Section. Keysight recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552.

9. U.S. GOVERNMENT RESTRICTED RIGHTS

(a) Commercial Software. The SOFTWARE and its accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, for purposes of Federal Acquisition Regulations (“FAR”) 12.212, and the restrictions set forth in such regulations, and this Agreement shall be deemed to be the license described in such regulations. Any use, modification, reproduction, release, performance, display, or disclosure of the SOFTWARE or its accompanying Documentation by any agency, department, or entity of the United States Government (the “Government”) shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by the terms of this Agreement. The SOFTWARE and its accompanying Documentation are also deemed to be “restricted computer software” for purposes of FAR 52.227-14(g)(3) (Alternate III (June 1987)), which clause is incorporated herein by reference subject to the express restrictions and prohibitions set forth above.

(b) Certain Technical Data. Any technical data provided that is not covered by the above provisions is deemed to be “technical information related to commercial computer software or commercial computer software documentation” for purposes of FAR 12.212 and the restrictions set forth therein, and is deemed to be “technical data or information related or pertaining to commercial items or processes” developed at private expense and this Agreement shall be deemed to be the license described in such regulations. Any use, modification, reproduction, release, performance, display, or disclosure of such technical data by the Government shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by the terms of this Agreement. Such technical data is also deemed to be “limited rights data” as defined in FAR 52.227-14(a) (Alternate I (June 1987)) and for purposes of FAR 52.227-14(g)(2) (Alternate II (June 1987)), which clauses are incorporated herein by reference subject to the express restrictions and prohibitions set forth above.

(c) Third Party Acceptance of Restrictions. Licensee shall not provide the SOFTWARE, its accompanying Documentation, or the technical data to any party, including the Government, unless such third party accepts the same restrictions as are set forth in this Section 10. Licensee is responsible for ensuring that the proper notice is given to all such third parties and that the SOFTWARE, its accompanying Documentation, and the technical data are properly marked with the required legends. Nothing in this Section 10(c) shall be deemed to modify the restrictions on transfer or disclosure set forth elsewhere in this Agreement.

10. GOVERNING LAW; ENFORCEMENT

(a) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the Federal laws of the United States. IN ADDITION, THIS AGREEMENT WILL NOT BE GOVERNED OR INTERPRETED IN ANY WAY BY REFERRING TO ANY LAW BASED ON THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA), AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXCLUDED.

11. INVALIDITY OF PROVISIONS

If any provision in this Agreement is invalid or unenforceable, such provision shall be construed, limited, or altered, as necessary, to eliminate the invalidity or unenforceability and all other provisions of this Agreement shall remain in effect.

12. MISCELLANEOUS

(a) This Agreement and the Limited Warranty Agreement together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase order(s) set forth the entire agreement between Keysight and Licensee with respect to the SOFTWARE, the Documentation, and Licensee's use thereof. No provision of this Agreement or of the Limited Warranty Agreement may be waived, modified, or superseded except by a written instrument signed by each of Keysight and Licensee. No failure or delay in exercising any right or remedy shall operate as a waiver of any such (or any other) right or remedy. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against either party, regardless of who drafted or was principally responsible for drafting this Agreement or any specific term or conditions hereof. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns. Both parties are acting as independent contractors with respect to the activities hereunder.

LIMITED WARRANTY AND TECHNICAL SUPPORT AGREEMENT FOR IIXIA BRANDED KEYSIGHT PRODUCTS

Ixia is a business of Keysight Technologies.

Congratulations on your purchase of one or more Ixia branded products. References herein to Ixia branded products include Ixia branded products and professional services sold by Keysight Technologies, Inc. and it affiliates (“Keysight”). Only those Ixia branded products listed

on the quote that you received from Keysight or its authorized reseller are covered under this Limited Warranty and Technical Support Agreement (this “Warranty Agreement”). By using any of the products or services that are covered by this Warranty Agreement, you agree to be bound by the terms and conditions set forth herein.

a. **Limited Hardware Warranty**

Subject to the exceptions in Section VII below, Keysight provides a limited warranty that covers the hardware and software media (e.g., USB drives) that Keysight ships as part of its Ixia branded products (the “Hardware Warranty”). For the avoidance of doubt, the Hardware Warranty does not cover third party products that are separate and distinct from Keysight products and merely resold by Keysight.

**What Is Covered:** The Hardware Warranty covers only material defects in the hardware and software media shipped as part of Ixia branded products (each, a “Defect”).

**For How Long:** The Hardware Warranty is effective for twelve (12) months from the date on which Keysight first ships the corresponding product or any part or portion thereof (such time period is referred to herein as the “Initial Hardware Warranty Term”). Further, for each item that is repaired or replaced by Keysight pursuant to the Hardware Warranty, the Hardware Warranty will remain effective for the longer of (i) the remainder of the Initial Hardware Warranty Term and (ii) three (3) months following the date on which Keysight first ships the repaired or replaced item. If you purchase additional hardware functionality during the Hardware Warranty Term, including but not limited to adding or changing the configuration of ports, such purchase shall not extend the Hardware Warranty Term for the underlying hardware base unit.

**What Keysight Will Do:** Except as otherwise expressly set forth in the paragraph below titled “Advanced Replacement,” Keysight’s sole obligation under the Hardware Warranty is, at Keysight’s option, to either repair or replace the hardware or software media that contains the Defect, or refund (or cause the authorized reseller to refund) the purchase price of the corresponding Ixia branded product in exchange for your return of that product. Keysight may use refurbished items and/or substantially similar items to satisfy its obligations hereunder.

**What You Must Do:** If, during the applicable Hardware Warranty Term, you believe you have discovered a Defect, please contact Customer Support using one of the methods listed online at support.ixiacom.com. Customer Support may require some or all of the following information in order to assist in resolving your problem:

- Model number of the hardware.
- Serial number of the hardware.
- Software version.
- Software license key number or registration information.
- Detailed problem description.
- Customer name and telephone number, and an address to where any repaired or replaced hardware is requested to be shipped.

If Customer Support believes that there is a Defect in the hardware or software media that is covered by the Hardware Warranty and Customer Support cannot resolve that Defect remotely, then Customer Support will issue you a Return of Material Authorization (“RMA”) number. Any item that is returned without an RMA number may be refused by Keysight and returned to you at your sole cost and expense.

All defective hardware and software media that is returned to Keysight must be shipped to the shipping address specified by Customer Support. Hardware packaged incorrectly may be damaged in shipping, which will invalidate the Hardware Warranty with respect to that item and may cause you to incur a repair or replacement charge. **THE ASSIGNED RMA NUMBER MUST BE CLEARLY POSTED ON THE OUTSIDE OF THE BOX.** Keysight is responsible for all packing, shipping, insurance costs, taxes, tariffs, and duties (collectively, “Shipping Costs”) due in connection with your return of any item, and you assume the risk of loss and damage for all such items in transit to the shipping address specified by Customer Support. Except as otherwise provided below, Keysight is solely responsible for all Shipping Costs due in connection with Keysight’s return of any repaired or replacement item under the Hardware Warranty, and Keysight assumes the risk of loss and damage for all such items in transit to your return address. If Keysight must return any repaired or replacement item to a location outside of the United States of America, then the foregoing sentence will not apply and, instead, the transportation terms will be the same as those of the initial product sale. Title to any replacement items will transfer to you when risk of loss transfers from Keysight to you pursuant to the foregoing. If Keysight is requested to return any repaired or replacement item to a country that is different from the country in which the item was originally purchased, then Keysight may, at its sole option, either return the item to the country in which it was originally purchased or charge you for any additional costs incurred by Keysight as a result of that change. If a returned item is determined by Keysight to not contain a Defect or otherwise not be covered by the Hardware Warranty, then Keysight may, at its sole option, charge you for any related costs incurred by Keysight, and you will be responsible for the return of that item to you and for all related Shipping Costs.

**IMPORTANT:** Before shipping any hardware in accordance with the instructions above, you must (1) back up the data on any hard drive(s) or on any other storage device(s) in that hardware, (2) remove any confidential, proprietary, or personal information (collectively, “Confidential Information”), (3) remove any removable media, such as DVDs, and (4) de-register all Ixia branded software licenses that are registered to that hardware. Keysight will not be responsible for any loss of or damage to your data or your removable media. Further, except as expressly set forth in a written agreement that has been signed by Keysight, and to the extent permitted by applicable law, Keysight will have no liability for any use or disclosure of your Confidential Information.

**Advanced Replacement:** Ixia branded hardware covered by the Hardware Warranty will be entitled to Advanced Replacement if (i) within the ninety (90) day period immediately following the date on which Keysight first ships such hardware, you notify Customer Support in the manner specified above that such hardware contains a potential Defect, and (ii) Customer Support issues an RMA number for such...
hardware. “Advanced Replacement” means that, at your request, Keysight will use commercially reasonable efforts to initiate shipment of replacement hardware within two (2) business days following Keysight’s issuance of such RMA. If you make use of Advanced Replacement, you must return the hardware that contains the potential Defect (the “Defective Hardware”) to Keysight as instructed above within fifteen (15) days following your receipt of the replacement hardware, or you will be charged Keysight’s then-current, applicable list price for the replacement hardware. Ownership of the Defective Hardware will transfer to Keysight upon Keysight’s receipt thereof. You acknowledge that the replacement hardware may be refurbished hardware and/or may be a different model than the Defective Hardware (so long as it is a substantially similar model).

2. Limited Software Warranty
Subject to the exceptions in Section VII below, Keysight provides a limited warranty with respect to its Software (the “Software Warranty”). The term “Software” refers to Ixia branded software and firmware programs that are provided by Keysight, but excludes any Third Party Software. The term “Third Party Software” refers to third party software programs that are provided by Keysight but that are separate and distinct from Keysight’s proprietary software (e.g., a third party operating system or antivirus program).

What Is Covered: The Software Warranty only covers the most current General Availability (GA) version of the Software and the most current Early Adopter (EA) version of the Software. Further, the Software Warranty only covers programming defects and errors in the Software that materially and adversely affect the operation of the Software in accordance with its documentation (each, an “Error”). The Software Warranty does not cover Third Party Software.

For How Long: The Software Warranty is effective for twelve (12) months from the Delivery Date (such time period is referred to herein as the “Initial Software Warranty Term”). The term “Delivery Date,” as used herein, means the first date on which Keysight (i) has shipped the media containing the corresponding Software or has made it available for electronic download and (ii) has provided you with any required license key needed to download, install, and/or activate such Software.

What Keysight Will Do: Keysight’s sole obligation under the Software Warranty is to use commercially reasonable efforts to correct or provide a work around for each Error.

What You Must Do: If, during the applicable Software Warranty term, you believe you have discovered an Error, please contact Customer Support using one of the methods listed online at support.ixiacom.com. Customer Support may require some or all of the following information in order to assist in resolving your problem:
- Software version.
- Software license key number or registration information.
- Model number of corresponding hardware.
- Serial number of corresponding hardware.
- Detailed problem description.
- Customer name, address, and telephone number.

Third Party Software: All Third Party Software is provided by Keysight “AS IS” and with no warranty. However, Third Party Software may be covered by a separate warranty provided by the third party licensor of that software. Further, if any Ixia branded hardware or Software product fails to operate substantially in accordance with its documentation as the result of any defect in any Third Party Software, then Keysight will use commercially reasonable efforts to obtain a remedy for that defect, provided that such Ixia branded hardware or Software product (i) is covered under the Hardware Warranty or Software Warranty (as applicable), and (ii) is designated by Keysight as compatible with that Third Party Software. For assistance with any such defect, please contact Customer Support using one of the methods listed at support.ixiacom.com.

3. Professional Services Warranty
Keysight warrants that all Professional Services will be performed in a good and workmanlike manner, consistent with applicable industry standards (the “Professional Services Warranty”). As used herein, the term “Professional Services” refers to services provided by Keysight for a fee that are separate and distinct from the warranty, maintenance, and support services described elsewhere in this Warranty Agreement. The Professional Services Warranty will be in effect for thirty (30) days following completion of the corresponding services (the “Warranty Period”). Customer’s sole and exclusive remedy for any breach of the Professional Services Warranty will be for Keysight, at its option, to either re-perform the non-conforming services or refund the corresponding fees paid by Customer hereunder, and Keysight will have no obligation with respect to any such breach that is first reported to Keysight after the Warranty Period.

4. Technical Support
Subject to the product-specific exceptions in Section VII below, Keysight will provide you with technical support services to assist you with the installation, operation, and/or configuration of each Ixia branded product that you have purchased or licensed, and to assist you with any Defects or Errors that you believe you have identified (“Technical Support”). Technical Support will only be provided for so long as that product is covered under the Hardware Warranty or Software Warranty (as applicable), and you must be registered with Keysight as the original owner/licensee of that product to receive Technical Support. Except as otherwise determined by Keysight in its sole discretion, all Technical Support will be provided remotely (e.g., via telephone and/or email, or through ixiacom.com). Further, except as expressly set forth in Section VI below or as otherwise determined by Keysight in its sole discretion, Technical Support will only be provided during the hours specified on our website at support.ixiacom.com (“Business Hours”) for the region in which the applicable Support Center is located. To locate the applicable contact information for Customer Support, or to access any online Technical Support resources available with respect to the Ixia branded product that you have purchased or licensed, please visit that website.

5. Software Updates
Subject to the exceptions in Section VII below, Keysight will make available to you all Updates for Software that you have licensed for so long as that Software is covered under the Software Warranty. The term “Updates” refers to modifications, enhancements, and upgrades to
Software that Keysight makes generally available, at no additional fee, to its other customers who are covered by the same Software Warranty. For the avoidance of doubt, the term “Updates” does not include any modifications, enhancements, or upgrades to Software that are licensed separately for an additional fee. All Updates and Error corrections provided for Software pursuant to this Warranty Agreement will constitute part of that Software and are provided to you under the terms of the applicable software end user license agreement for that Software.

6. Additional Services
You may purchase, for an additional fee, the services described below in this Section VI (individually and collectively, the “Additional Services”) to supplement the warranties, support, and services described above. Keysight may, in its sole discretion, not offer or cease offering any of the Additional Services for any products. Notwithstanding anything in this Warranty Agreement to the contrary, for so long as a product is covered by the Additional Services, that product shall also be covered by, as applicable, the Hardware Warranty, the Software Warranty, Technical Support, and Updates.

**Essential Support.** For each Ixia branded product covered by Essential Support, Keysight will use commercially reasonable efforts to respond to each of your requests for Technical Support regarding that product within two (2) Business Hours following Keysight’s initial receipt of that request. For so long as an Ixia branded hardware product is covered by Essential Support, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that product by Customer Support.

**Enterprise 24x7 Support:** For each Ixia branded product covered by Enterprise 24x7 Support, (i) Keysight will use commercially reasonable efforts to respond to each of your requests for Technical Support regarding that product within two (2) hours following Keysight’s initial receipt of that request, and (ii) a senior Support Advocate (either Director level or above and designated by Keysight) will, at your request and up to once per calendar quarter, meet with you at the time and location agreed upon by you and Keysight (“Support Advocate Meeting”) to discuss your existing and closed Technical Support cases with respect to that product, any proposals you may have for Keysight to improve its support services, and any recent or anticipated improvements to Keysight’s support services that may benefit you. Support Advocate Meeting rights for a particular calendar quarter expire at the end of that calendar quarter and may not be accrued or rolled over to subsequent quarters. For so long as an Ixia branded hardware product is covered by Enterprise 24x7 Support, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that product by Customer Support.

7. Exceptions

**BreakingPoint Software Products:** You will only be entitled to Technical Support and Updates for the BreakingPoint Software that you have licensed if, and for so long as, that Software is covered by an Application Threat Intelligence (“ATI”) subscription. An ATI subscription also entitles you to StrikePack Updates. StrikePack Updates contain new security attacks and application protocols for BreakingPoint Software. You must pay an additional fee for an ATI subscription.

**BreakingPoint Hardware Products:** For so long as your BreakingPoint hardware product is covered by the Hardware Warranty, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that hardware by Customer Support.

**IxCatapult Products:** For all IxCatapult products that are delivered to you outside of Japan, both the Initial Hardware Warranty Term and the Initial Software Warranty Term shall be three (3) months in length.

**ThreatARMOR Products:** ThreatARMOR products are not covered by either the Hardware Warranty or the Software Warranty unless such products are also covered by either Essential Support or Enterprise 24x7 Support. Further, Essential Support and Enterprise 24x7 Support for a ThreatARMOR product must be purchased together with an ATI subscription. You must pay additional fees for Essential Support, Enterprise 24x7 Support, and the bundled ATI subscriptions.

**TradeView Products:** You will not receive any Updates to the Market Data Feeds Decoder for any TradeView products that you have purchased unless you have an active Feed Decoder subscription. You must pay an additional fee for a Feed Decoder subscription.

**Mobile Applications:** From time to time, Keysight may make one or more mobile software applications (“Apps”) available for use in conjunction with one or more of the Ixia branded products. Apps may be made available through the Apple App Store, the Google Play Store, or otherwise. All Apps are provided “AS IS,” and you shall not be entitled to any warranty, support, or software updates of any kind with respect thereto.

**Professional Services:** You will not be entitled to the Hardware Warranty, the Software Warranty, or Technical Support in connection with any goods or services provided to you as part of the Professional Services.

8. Coverage Limitations

**WHAT IS NOT COVERED:** NOTWITHSTANDING ANYTHING IN THIS WARRANTY AGREEMENT TO THE CONTRARY and in addition to all other limitations set forth in this Warranty Agreement, the Hardware Warranty, Software Warranty, the Professional Services Warranty, Technical Support, Updates, any Additional Services that you have purchased, and any other services identified herein that you have purchased (collectively, the “Services”) do not cover:

- Products with missing or altered serial numbers.
- Hardware products that have been opened, or for which any of the security screws have been removed without Keysight’s prior authorization.
• Products for which Keysight (or Keysight’s authorized reseller, if applicable) has not received full payment in accordance with the applicable payment terms.
• Lost or stolen products.
• Non-serialized accessories, such as cables, baffles, and mounting brackets (unless the corresponding Ixia branded hardware base unit for such item is covered under the Hardware Warranty, in which case Keysight’s sole obligation shall be to use commercially reasonable efforts to provide the Services for such item).
• Problems that result from:
  o external causes such as accident, abuse, misuse, or problems with electrical power;
  o servicing not authorized by Keysight;
  o installation or usage that is not in accordance with the corresponding documentation provided by Keysight;
  o failure to perform commercially reasonable preventative maintenance; or
  o use of accessories, parts, components, or software not supplied by Keysight.
• Problems that are first reported after the effective period of the applicable Services.
• The physical installation or physical deployment of any products (except if and to the extent that such services were to be provided as part of the corresponding Professional Services).

Repairs Do Not Extend Warranty Periods: Except as otherwise expressly provided above with respect to hardware products, the effective periods of the Services will not be extended as the result of any repairs, replacements, Error corrections, or Software updates provided hereunder.

Not Transferable: Only the original end user authorized by Keysight to use the Ixia branded product(s) may receive the corresponding Services. None of the Services may be assigned or transferred, directly or indirectly, by operation of law or otherwise. Any such termination will not affect any amounts due from you hereunder, and you will not be entitled to any refund of any pre-paid amounts as a result of any such termination.

Services Provided in English: Except as otherwise determined by Keysight in its sole discretion, all Services shall be provided in the English language only.

Force Majeure: Keysight shall not be liable for failing to perform any of its obligations under this Warranty Agreement if such failure is due to a cause beyond Keysight’s reasonable control.

9. Other Limitations

DISCLAIMER OF WARRANTIES: Keysight warrants that ALL HARDWARE, SOFTWARE, SOFTWARE MEDIA, THIRD PARTY HARDWARE INTEGRATED INTO A KEYSGIHT SOLUTION, AND THIRD PARTY SOFTWARE INTEGRATED INTO A KEYSGHIT SOLUTION PROVIDED BY KEYSIGHT OR ITS AUTHORIZED RESELLERS AS PART OF OR IN CONNECTION WITH ANY IXTA BRANDED PRODUCT, OR IN CONNECTION WITH THIS WARRANTY AGREEMENT (Collectively, THE "KEYSIGHT DELIVERABLES") will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Keysight’s published specifications for the KEYSGHIT DELIVERABLES. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE "KEYSIGHT DELIVERABLES, THIRD PARTY HARDWARE OR THIRD PARTY SOFTWARE THAT IS NOT INTEGRATED INTO A KEYSGHIT SOLUTION, PROFESSIONAL SERVICES, AND OTHER SERVICES ARE PROVIDED "AS IS", AND KEYSGHIT AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE KEYSGHIT DELIVERABLES AND/OR USE OF THE KEYSGHIT DELIVERABLES (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE KEYSGHIT DELIVERABLES (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT OR WILL BE UNINTERRUPTED OR ERROR-FREE.

LIMITATIONS ON LIABILITY: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL KEYSGHIT BE LIABLE UNDER ANY THEORY OF LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF PROFITS, REVENUE, DATA, OR USE, OR FROM INTERRUPTED COMMUNICATIONS OR DAMAGED DATA, OR IN CONNECTION WITH CUSTOMER'S ACQUISITION OF SUBSTITUTE GOODS OR SERVICES, OR ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR STRICT LIABILITY, EVEN IF KEYSGHIT OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, KEYSGHIT’S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH THIS WARRANTY AGREEMENT AND/OR IN CONNECTION WITH ANY DELIVERABLES (OR YOUR LICENSING, PURCHASE, OR USE THEREOF) WILL NOT EXCEED THE CONTRACT PRICE. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM KEYSGHIT’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

Unauthorized Persons Cannot Change Terms: Additional statements by agents, employees, or resellers of Keysight do not constitute warranties by Keysight, do not bind Keysight, and may not be relied upon. This Warranty Agreement may only be amended by a written agreement signed by both parties.

Export Restrictions: You expressly agree that you assume full responsibility for obtaining any and all required export authorizations from all applicable government authorities prior to exporting, re-exporting or transferring any items, technology or technical data and for
complying with all applicable laws and regulations relating to any such transfer or transaction. You shall not sell or transfer any items, technology or technical data to any entity designated or identified by the U.S. Government as a restricted person or included on any U.S. Government-maintained restricted person list, including, but not limited to, (i) the Specially Designated Nationals and Blocked Persons List, (ii) the Foreign Sanctions Evaders List, (iii) the Sectoral Sanctions Identification List, (iv) the Entity List, (v) the Denied Persons List, and (vi) the Unverified List (collectively, “US Restricted Lists”). Further information on these and other applicable lists can be found at www.treasury.gov or www.bis.doc.gov. Keysight may, in its sole discretion, suspend performance or cancel all or part of the order if you are designated on US Restricted Lists or you do not comply with the provisions of this section and may, in its sole discretion, refuse to perform any post-sale services with respect to the items (including, but not limited to, any repair or replacement under warranty) if such activities would involve in any way, an entity on any US Restricted Lists. Keysight may, in its sole discretion, require you to provide an end user certificate and/or an export license prior to Keysight’s delivery of any item to you.

**Governing Law and Jurisdiction:** This Warranty Agreement and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the Federal laws of the United States without giving effect to principles of conflicts of law. THIS WARRANTY AGREEMENT WILL NOT BE GOVERNED OR INTERPRETED IN ANY WAY BY REFERRING TO ANY LAW BASED ON THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA), AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXCLUDED.

**Termination:** Any such termination will not affect any amounts due from you hereunder. For subscription licenses, this Warranty Agreement will terminate when your subscription expires or is terminated.

**Severability:** If any provision of this Warranty Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Warranty Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by applicable law.

**Survival:** This Section IX of this Warranty Agreement will survive any expiration or termination of this Warranty Agreement for any reason and continue in full force and effect in perpetuity.

10. **Renewals**
You may renew the Services for one or more additional, successive terms, subject to your issuance of a purchase order and subject to the following conditions and limitations:

- The renewal agreement be in writing and signed by both parties.
- Renewal fees and renewal term lengths will be as determined by Keysight in accordance with the GSA pricelist and as set forth in the applicable purchase order.
- Renewal terms must be continuous with no gaps in coverage. Any reinstatement of coverage after a gap in coverage is to Keysight’s approval.
- Except as otherwise set forth in a written agreement signed by Keysight, all of the terms, conditions, and limitations set forth in this Warranty Agreement will apply with respect to each such renewal order.
- Certain Services may only be renewed together with certain other Services. Please contact the Support Renewals team at renewals@ixiacom.com or your account representative for an explanation of these dependencies.
- Notwithstanding anything in this Warranty Agreement to the contrary, on and after the End-of-Development Date for an Ixia branded product, Keysight may refuse to provide code changes to correct Errors in that product. Such End-of-Development Dates are set forth in Keysight’s End of Life Policy for Ixia branded products, which is posted at support.ixiacom.com.
- Keysight may, at any time and in its sole discretion, cease offering renewal terms for any of the Services, refusal to renew any of the Services, or condition any such renewal upon your acceptance of terms and conditions that are in addition to, or different than, the terms and conditions set forth in this Warranty Agreement which must be agreed to in writing by both parties.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached KBZ Communications, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   z) **Termination.**Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   ee) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees that the attached Manufacturer Specific Terms and this Rider contain no verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

KBZ COMMUNICATIONS, INC.

KBZ COMMUNICATIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Warranty Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS ATTACHMENT A, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW AND SPECIFICALLY DISCLAIMS LIABILITY IN CONNECTION WITH SUCH WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

SERVICE SUMMARY

This document describes the services offerings of the KBZ ZCare Technical Support Program ("ZCare"). It outlines the deliverables by Contractor through KBZ ZCare Technical Support Services to an Ordering Activity of Contractor ("Ordering Activity"). An "Ordering Activity" is defined as either an End User customer who has purchased ZCare from Contractor for Cisco TelePresence equipment and/or systems.

Service definitions herein will focus on three core deliverables by Contractor through ZCare Technical Support Services:

1. SoftCare Software Support
2. Advanced Replacement Service
   a. RMA Process in Support of Advance Equipment Replacement
   b. Delivery and Collection RMA
   c. End of Life Statement
3. Help Desk Telephone Technical Support
   a. Help Desk Call Flow
   b. ZCare Service Level Commitment
   c. Escalation Procedure

This document additionally addresses Call Flow and Escalation Management for critical situations.

1. SOFTCARE SOFTWARE SUPPORT

SoftCare support is a maintenance component of the ZCare Technical Support program that makes available to the Ordering Activity, all applicable software releases. To ensure better communication and awareness of this software notification program, ZCare Technical Support Services will automatically alert the Ordering Activity when new releases are available.

The SoftCare e-mail notification will contain, at minimum, the following key information:

1. Feature list (a brief explanation of the contents and benefits of the software release)
2. Download instructions
3. Release Key information
4. WEB Release Key Generator

2. ADVANCED REPLACEMENT SERVICE

The ZCare Advanced Replacement Service provides for replacement equipment, return paperwork, and arrangement for collection of faulty equipment.

Next-day support for advanced parts exchange is available until 5:00 EST within the United States. It is the responsibility of the Ordering Activity to (1) ensure that faulty equipment is returned in original packaging provided with delivery of the replacement parts, and (2) to return and ship faulty equipment within 15 working days of receipt of the replacement equipment (unless special conditions are agreed to in advance; reviewed on a case-by-case basis).

Disclaimer: ZCare technical Support Service endeavors to deliver replacement equipment within 24 hours in the United States. However, neither Contractor nor ZCare Technical Support Services can be held liable for delays caused by events outside of our direct control.

RMA Process in Support of Advanced Parts Replacement

1. ZCare Technical Support Services will open a Work Order on an existing trouble ticket.
2. ZCare will complete an RMA with Ordering Activity shipping information, product information (serial number, part number, software version, installed options) and a fault description.
3. ZCare will forward the RMA to Cisco for processing and product shipment.
4. Replacement equipment will be dispatched from Cisco’s warehouse the next business day after receipt of a correctly completed RMA.

5. Once replacement equipment has been shipped, the warehouse will forward tracking information to ZCare Technical Support Services. Contractor through a KBZ representative will then forward this information to the Ordering Activity.

6. This policy applies Monday through Friday, local holidays excluded; regional delivery lead times apply; shipped the same day, up to 5:00 local time, for next day delivery.

7. Larger equipment shipped as freight may take 3 to 5 days for delivery.

Note: Due to the weight and dimensions of plasmas and monitors delivery time may vary for these items.

**Delivery & Collection RMA**

Contractor through Cisco will send replacement parts together with return paperwork. *In this case, The Ordering Activity must:

1. Return all faulty units in the factory supplied packaging delivered and containing the replacement parts
2. Sign and return shipping invoice and shipping documents
3. Schedule pick-up/collection of failed/replaced equipment
4. Cisco will pay shipping costs in both directions * 
5. It is the responsibility of the Ordering Activity to ensure that faulty parts (1) returned in original packaging provided with delivery of the replacement parts, and (2) return shipped within 15 working days of receipt of the replacement parts (unless special conditions are agreed to in advance. This will be reviewed on a case-by-case basis).

**END OF LIFE STATEMENT**

The ZCare Technical Support Services commits to providing technical support and development on all components manufactured by Cisco for a period of five years beyond the announced en-of-sale-date. This support will include the following items:

- **Spare or replacement parts** in accordance with the KBZ Return Materials Authorization (RMA) process.
- **Access to ZCare Help Desk** availability 20 hours a day, 7 days a week.
- **SoftCare email notifications** of related Cisco software maintenance releases.

**TELEPHONE TECHNICAL SUPPORT**

The Ordering Activity may report product problems and failures to Contractor through ZCare Technical Support Services via the designated toll free number: 1-888-492-2734. All calls are entered into the call tracking system.

**Help Desk Call Flow and Escalation Process**

When a call or email comes into the Help Desk, the problem tracking and resolution process proceeds as follows:

- Technical support representative assigns a unique Trouble Ticket Number.
- Technical support representative requests the system serial number from the Ordering Activity. If the serial number is not available, representative will still open a ticket, but shipping and troubleshooting delays may result.
- Technical support representative assess problem, and then assigns a Case Priority Level based on criteria explained in Table 1: Case Priority Levels and Response Time Targets.
- Technical support representative dispatches technician in accordance with priority level response time.
- As deployments or milestones occur within the troubleshooting process, the ZCare Online Ticketing System is updated.
- ZCare Service level offering is based on the criteria explained in Table 1: Case Priority Levels and Response Time Targets. If escalation is required outside of this regular process, the Ordering Activity should use the escalation procedure defined under “ZCare Service Level Commitment” on page 4.

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Definition of Need</th>
<th>Response Time Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Urgent</td>
<td>An event or combination of events causing 100% loss of system availability</td>
<td>30 Minutes</td>
</tr>
<tr>
<td>2. Critical</td>
<td>An event or multiple events causing a continuous or chronic impact to operation</td>
<td>1 Hour</td>
</tr>
<tr>
<td>3. High</td>
<td>An event or multiple events with the potential to cause an impact to operation</td>
<td>4 Hours</td>
</tr>
<tr>
<td>4. Normal</td>
<td>A condition having no immediate impact on operation but requiring maintenance action</td>
<td>8 Hours/ Next Business Day aid</td>
</tr>
</tbody>
</table>

**ZCARE SERVICE LEVEL COMMITMENT**

In addition to problem solving related to Cisco TelePresence equipment, Contractor through ZCare Technical Support Services will work with the Ordering Activity to collaborate in solving network issues impacting equipment used and deployment. Table 2 describes the ZCare Service level commitment by the priority level assigned to the case.

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Service Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Urgent</td>
<td>An existing network is down or there is a critical impact to the Ordering Activity’s business operation. Cisco, Partner and End User will commit full-time resources to resolve the situation.</td>
</tr>
<tr>
<td>2. Critical</td>
<td>Operation of an existing network is severely degraded, or significant aspects of the Ordering Activity’s business operation are being negatively impacted by unacceptable product performance.</td>
</tr>
</tbody>
</table>
Cisco, KBZ, and Contractor will commit full-time resources during Standard Business Hours to resolve the situation.

3. High
Operational performance of the network is impaired while most business operations remain functional. Cisco, Partner, and Ordering Activity are willing to commit resources during Standard Business Hours to restore services to satisfactory levels.

4. Normal
Information or assistance is required on Cisco product capabilities, installation, or configuration. There is clearly little or no impact to the Ordering Activity’s business operation. Cisco, Partner, and Ordering Activity are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

ESCALATION OVERVIEW
The ZCare Technical Support Services 24/7 Help Desk provides services escalation resulting from support that is not meeting the actual service levels outlined herein, or in a service emergency where support requirements dictate a response outside of the scope outlined herein. In this event, all escalations are to be directed to Shamus Doyle, KBZ Technical Services Manager by any of the following means:

Office: 215/348-9481 x 106 | Cell: 484/888-8034 | email: shamus.doyle@KBZ.com
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Kony, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 482.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-Of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

(t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

KONY, INC.

KONY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions:

1.1 “Ordering Activity Application” means a Platform-enabled mobile application developed by or for Ordering Activity or the pre-configured mobile application included in the Kony Pre-Packaged Application that is configured for its use.

1.2 “Hosting Services” means the Program hosting services provided by Kony, if applicable, pursuant to an executed hosting agreement (“Hosting Agreement”).

1.3 “Kony Studio” or “IDE” means the Kony Studio software, which is an integrated development environment that enables the development modification and deployment of a Ordering Activity Application or configuration of a Kony Pre-Packaged Application by or on behalf of Ordering Activity.

1.4 “Kony Development Cloud” or “Platform” means Kony’s standard (non-Ordering Activity-specific) unified application platform for the design, development & deployment of native on-device and web based applications, comprising of Kony’s integrated development environment and Kony’s middleware server software, all of which support the operation and use of the Ordering Activity Application.

1.5 “Kony Pre-Packaged Applications” means a specific pre-configured mobile application that is designed and developed as a single code base with common and selectable features and functionality that will be configured using Kony Studio to provide for unique branding presentation, selectable integration capabilities, and flexibility to generate native on-device, mobile web, and/or SMS/MSS clients. A Pre-Packaged Application is bundled with an application specific run-time license to a single User of the Kony Studio and Kony’s middleware server software.

1.6 “Maintenance / Support Services” means the support services provided by Contractor as described in Section 4 hereunder.

1.7 “Order” means an ordering document between Contractor and Ordering Activity that specifically references this Agreement and describes the Programs(s) licensed, pricing, license term and other terms associated with a transaction.

1.8 “Program(s)” means the executable code of the commercially released version of the Kony Studio, Kony Pre-Packaged Applications and Kony Development Cloud computer software program(s) or portion thereof made available to Ordering Activity by Kony hereunder, as specified on an Order. Programs also include releases, updates and upgrades to the Programs and documentation as may be made available to Ordering Activity by Contractor as part of Support Services.

2. Licensing.

2.1 Delivery. Upon execution of this Agreement, Contractor will provide a copy of the applicable Program(s) to Ordering Activity.

2.2 Grant of License. Contractor hereby grants to Ordering Activity a perpetual, limited, non-exclusive and non-transferable license, for the Programs specified on the applicable Order, to do the following but only to the extent that Programs are licensed by Ordering Activity on an Order (each such situation a permitted “Use”):

(a) Kony Studio. To install, execute and configure the documented development features of the Kony Studio, solely to create customized applications (including the right to embed and distribute Contractor’s redistributable .exe libraries therein provided Ordering Activity maintains a fully paid production license to the Platform), improvements, extensions or interfaces to a Ordering Activity Application or Pre-Packaged Application. Kony Studio is licensed on a per “User” basis which is a single individual designated by Ordering Activity, which may include employees, agents, independent contractors or consultants located at Ordering Activity’s facility.

(b) Kony Platform. To (i) as specified on an Order, install and execute a single User license of Kony Studio at Ordering Activity’s site and execute a single or multiple production implementation of Kony’s middleware server software by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a execute a single User license of Kony Studio at Ordering Activity’s site and a single or multiple production implementation of Kony’s middleware server software on Ordering Activity’s server(s), each of which to (a) access and use the administrative and other functions and features of the Platform by Ordering Activity internally; and (b) allow Ordering Activity’s authorized end users to access and use the end user features and functions of the Platform through supported channels; in accordance with the Order, documentation and this Agreement.
Kony Pre-Packaged Applications. To (i) as specified on an Order execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform on Ordering Activity's server(s); and (iii) unlimited rights to distribute the client portion of the Pre-Packaged Application to Ordering Activity authorized end users for their personal use; both of which to allow (a) Ordering Activity to access and use the administrative and other functions and features of the Pre-Packaged Application internally; and (b) Ordering Activity's authorized users to access and use the end user features and functions of the Pre-Packaged Application through supported channels all in accordance with the Order, documentation and this Agreement.

(d) Documentation. To use the documentation provided by Contractor in support of Ordering Activity's permitted Use of the Programs, and to reproduce the documentation (or excerpts thereof) as are reasonably necessary to support Ordering Activity's end users.

(e) Back-Up. To reproduce and install Programs(s) on a back-up server, and execute such Programs(s) on that back-up server only for back-up, back-up testing, disaster recovery and Programs fail-over purposes when Ordering Activity's production servers are inoperative. Ordering Activity agrees to maintain accurate and current records of all locations of backup copies.

3. Restrictions. Ordering Activity acknowledges that the Programs and their structure, organization, source code and related documentation constitute valuable trade secrets of Kony and its suppliers. Accordingly, except as expressly permitted in Section 2.2, Ordering Activity agrees not to:

- use the Programs in any service-bureau, timesharing, outsourcing or fee-for-service arrangement;
- combine or merge a Program with or into another software or incorporate any Program or portion thereof into any compilation;
- disassemble, decompile, reverse engineer or otherwise attempt to derive the structure, sequence or organization of source code, except as permitted by applicable law to achieve interoperability with other software if Kony does not offer the means to do so;
- remove or alter product identification, copyright, trademark or other proprietary markings contained in or on the Programs or documentation;
- modify, adapt, recast, transform or otherwise prepare a derivative work of a Program or portion thereof;
- otherwise use or copy the Programs or permit any third party to do any of the foregoing.

4. Maintenance / Support Services. During the term, Contractor will provide Ordering Activity with Maintenance / Support Services for the Programs in accordance with its Support Services policy as follows:

Kony Support Services Overview
Support Services for the KonyOnePlatform Programs (hereinafter “Programs”) will include the following:
- Standard Web support on weekdays, excluding India holidays
- Telephone support for Severity 1 incidents on a 24x7x365 basis
- Error resolution and escalation support
- 24x7x365 access to Kony's Support Portal for trained and certified users
- Access to technical support bulletins
- Patches, corrections, updates and releases to the Program(s) as made available by Kony under Support Services.

Contractor through Kony will provide Ordering Activity's designated employee(s) access to its technical support team (“Kony Help Desk”), for technical support. Ordering Activity may contact the Kony Help Desk for Support Services through the following means:

Web: http://support.kony.com - For Kony trained and certified individuals (log error reports)
Web: https://developer.kony.com – For Ordering Activities who have valid Program licenses (downloads, documentations, developers forum)
Phone: 1-877-777-7684 (for Severity 1 Incidents)

Definition of Support Severity and Response Times
Contractor through Kony will provide Support Services based on Error Reports logged by Ordering Activity in Kony’s support portal (following Ordering Activity's initial investigation and confirmation the Error is related to the Programs). With respect to the Kony Studio “IDE” (Developer’s Toolkit) and Kony Client Platforms, to ensure the validity of Error request, the submission of Error Reports must be reviewed and submitted by those employees or agents of Ordering Activity who have received Kony's IDE Developer Certification. Error Reports will be logged by Ordering Activity in accordance with the severity level definitions below. Contractor and Ordering Activity will work together to achieve consensus, should there be any disagreement in assigned severities. Severities assigned to Error Reports may change with time if mutually agreed to by both parties. For example, an issue may be initially categorized as Severity Low and upon further investigation; it may be mutually concluded by Contractor and Ordering Activity that the issue should be reclassified as Severity Medium.

Response and Target Resolution times for Errors will be measured from the time the Error Report is logged by Ordering Activity into Kony's support portal. Error Report activity will subsequently be managed and tracked through the portal.

“Error” means a Program function which does not operate in substantial conformance to Program documentation. Any feature request initiated by the Ordering Activity which is not documented in the Program documentation for the given release will be considered an enhancement feature request.
A “Critical” or “Severity 1” Error renders the Program completely unusable or nearly unusable or introduces a high degree of operational risk in Production environment. No Workaround is available. Until this Error is resolved, the Program’s use is essentially halted. A large number of users and/or core Program functionality is severely impacted.

A “High” or “Severity 2” Error renders essential functionality of the Program to be consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the Program is acutely degraded and causes continuing operational risk. A moderate number of users are significantly impacted, but overall the Program continues to function.

A “Medium” or “Severity 3” Error is an inconvenience or causes inconsistent behavior, which does not impede the normal functioning of the Program. It could be an Error that occurs inconsistently and affects nonessential functions or is an inconvenience which impacts a small number of users or small number of devices. It may also contain visual errors where the graphical display of the Program is not ideal, but still functioning correctly.

A “Low” or “Severity 4” Error has a small degree of significance, or is a minor cosmetic issue, or is a “one off” case. A “one off” case occurs when the Error occurs infrequently and cannot be reproduced easily. These are Errors that do not impact the daily use of the Program. A Low Error is something that does not affect normal use, and can be accepted for a period of time, but user would eventually want changed.

5. Ordering Activity Acknowledgement and Obligations.

Ordering Activity acknowledges and agrees that Contractor nor Kony does not monitor communications or data transmitted through the Programs or Ordering Activity Applications, nor does Contractor nor Kony have access to such communications or data, and that Contractor nor Kony shall not be responsible for the content of any such communications or transmissions. Ordering Activity shall use the Programs and Ordering Activity Applications for authorized and legal purposes. Ordering Activity is solely responsible for the activity of its users and shall ensure that they abide by all applicable laws (including but not limited to international copyright and US Export laws) in connection with Ordering Activity’s and its users’ use of the Programs and Ordering Activity Applications including, without limitation, those related to data privacy, international communications and the transmission of technical or personal data.

5.2 Ordering Activity acknowledges and agrees that Ordering Activity’s and its users’ use of the Programs and Ordering Activity Applications are dependent upon access to telecommunications and Internet services. Ordering Activity and its users shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the Programs and Ordering Activity Applications, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Contractor nor Kony shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

6. Reports.

6.1 Reserved.
6.2 Reserved.
6.3 Reserved.
6.4 Verification and Audit. Within reasonable agency regulations, and at Contractor’s written request, Ordering Activity will furnish Contractor with a certification signed by an officer of Ordering Activity verifying that the Programs are being used pursuant to the terms of this Agreement and any applicable Order. Upon at least thirty (30) days prior written notice, Contractor may audit Ordering Activity’s use of the Programs to ensure that Ordering Activity is in compliance with the terms of this Agreement and the applicable Order. Any such audit will be conducted during regular business hours at Ordering Activity’s facilities and will not unreasonably interfere with Ordering Activity’s business activities. Ordering Activity will provide Contractor with access to the relevant Ordering Activity records and facilities. If an audit reveals that Ordering Activity has underpaid license fees to Kony during the period audited, then Ordering Activity and Contractor will work diligently to true-up the account.

7. Ownership. The Programs are licensed to Ordering Activity subject to the terms of this Agreement. Contractor reserves all rights not expressly granted to Ordering Activity. Contractor retains ownership of all copies of the Programs. Ordering Activity acknowledges that the Programs contain and embed valuable, unpublished information that is proprietary and confidential to Contractor and its suppliers; Ordering Activity agrees to keep all such information confidential.

8. Reserved.


9.1 Definition. By virtue of this Agreement, the parties may have access to each other’s Confidential Information. “Confidential Information,” as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. ContractorConfidential Information includes, without limitation, the nonpublic aspects of the Programs and any software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Programs. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party’s employees and advisors, that have a reasonable need to know such information, provided that any such third parties shall, before they may access such information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information.
9.2 Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure without restriction on use or disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on use or disclosure; or (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

9.3 Use and Nondisclosure. Neither party shall make the other’s Confidential Information available to any third party or use the other’s Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other’s Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other’s Confidential Information are legally bound to comply with the obligations set forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency or court, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the disclosure.

10. Warranty and Disclaimer.

10.1 Limited Warranty. Contractor warrants to Ordering Activity that for a period of ninety (90) days from the date of delivery (“Performance Warranty Period”), the Programs, when used as permitted hereunder and in accordance with its documentation, will operate substantially as described in the documentation. If during the Performance Warranty Period, Ordering Activity notifies Contractor of a non-conformity in breach of the foregoing warranty through the applicable technical support Programs in writing, Contractor will, use commercially reasonable efforts to correct the non-conformity or provide a work-around within a reasonable period of time, or, if Contractor determines that it is unable to do so, Contractor will refund to Ordering Activity, any license fees paid for the non-conforming Program prorated from the date the non-conformity was reported to the end of the annual license term. In the event of a refund remedy, Ordering Activity’s license to use the affected Program will be terminated. This provision states Contractors entire liability and Ordering Activity’s sole remedy for any non-conformity in a Program.

10.2 Disclaimer. Ordering Activity assumes sole responsibility and liability for results obtained from the use of the Programs and Ordering Activity Applications and for conclusions drawn from such use. Ordering Activity acknowledges and agrees that Contractor makes no guarantee that the Programs or the use thereof by Ordering Activity or its users will satisfy Ordering Activity’s obligation to comply with industry standards or legal or other regulatory requirements, including without limitation those pertaining to data privacy and security or internal controls. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE PROGRAMS OR SERVICES. WITHOUT LIMITING THE FOREGOING, KONY DISCLAIMS ANY WARRANTY THAT THE PROGRAMS WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. CONTRACTOR FURTHER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PROGRAMS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Infringement Indemnification.

11.1 By Contractor. Subject to the limitations set forth below, and within the parameters of federal regulations, Contractor shall indemnify and defend Ordering Activity against any damages awarded against Ordering Activity in, or payable by Ordering Activity in settlement of, any suit or action brought against Ordering Activity to the extent that it is based upon a claim that the Programs, provided by Contractor hereunder, infringes or misappropriates the intellectual property rights of any third party. Contractor shall at Contractor’s expense, defend any such claim for which indemnity is sought. Ordering Activity shall provide reasonable cooperation to Contractor in Contractor’s defense of any such claim. Contractor’s obligations under this Section are contingent upon: (a) Ordering Activity providing Contractor with prompt written notice of such claim; (b) Ordering Activity granting to Contractor sole authority and control over the defense and settlement of such claim, provided that Contractor shall not agree to any settlement unless Ordering Activity has expressly approved of the settlement in advance, which consent will not be unreasonably withheld, conditioned or delayed; and (c) Ordering Activity keeping Contractor informed of all material developments related to such claim and (where applicable) providing reasonable cooperation to Contractor, at Contractor’s expense, in Contractor’s defense and settlement of such claim. In the event that Contractor’s right to provide the license, or the use of the Programs, is enjoined or in Contractor’s reasonable opinion is likely to be enjoined, Contractor may elect to obtain the necessary rights, or replace or modify the relevant portions thereof, so that they become non-infringing, or, if the foregoing cannot be achieved on a commercially reasonable basis, terminate this Agreement without liability to Ordering Activity and provide Ordering Activity a pro-rated refund of any pre-paid fees. EXCLUDING THE COST OF DEFENSE, THE FOREGOING STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE PROGRAMS.

Contractor shall have no liability or obligation under this Section 11.1 to the extent that any third-party claims described herein are based on (a) use of the Programs in a manner that violates this Agreement; (b) any combination of the Programs with any software, programs, product, service, component, method, and/or other element that is not supplied by Contractor, to the extent the claim would have been avoided but for such combination; (c) any modification to the Programs is made by any person other than Contractor; (d) Contractor’s compliance with particular specifications, instructions, or requirements furnished by Ordering Activity; or (e) any claim for which Ordering Activity is responsible.

11.2 Reserved.

12. Reserved.
13. **General.**

13.1 **Reserved.**

13.2 **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.3 **Severability.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. The parties agree that neither party shall be deemed the drafter of this Agreement and, in the event any provision in this Agreement is alleged to be ambiguous, such provision will not be construed in favor of one party on the ground that the provision was drafted by the other party.

13.4 **Reserved.**

13.5 **U.S. Government End Users.** The Programs and documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Programs and documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Programs and documentation will be only those specified in this Agreement.

13.6 **Assignment/Successors.** The parties may not assign or transfer this Agreement, in whole or in part, without the other Party's prior written consent. Any attempted assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, either party may assign or transfer this Agreement to its successor as part of a corporate reorganization, consolidation, merger or sale of substantially all assets of such party, provided the assignee assumes all obligations in this Agreement. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

13.7 **Non-Exclusive Remedies.** Except as set forth in this Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise, subject to the limitations set forth in this Agreement.

13.8 **No Third-Party Beneficiaries.** This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.9 **Reserved.**
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Lastline, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions - Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its
sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider
shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
END USER LICENSE AGREEMENT
(Commercial Terms and Conditions)

The GSA Schedule Contractor acting by and through its supplier, Lastline, Inc., (“Lastline”) and the user of the Licensed Product(s) purchasing under the GSA Schedule Contract (“Customer” or “Ordering Activity”), enter into this agreement including any schedules, exhibits or other attachments (collectively, this “Agreement”) effective as of the date set forth on the Order Form.

RECITAL

Lastline has developed several anti-malware software application solutions for use in protecting computers and computer network systems. Customer desires to license certain of such solutions pursuant to the terms and conditions of this Agreement.

In consideration of their respective rights and obligations as set forth in this Agreement, the parties agree as follows;

AGREEMENT

1. Definitions:

   a. **API** A set of web-based services providing programmatic access to Lastline systems and data, together with all updates, revisions, any associated tools and Documentation that Lastline may make available.
   
   b. **Artifact** Means any potentially malicious file, URL, email content, or other material submitted by the Customer to the Licensed Product for analysis.
   
   c. **Business Purpose** Use of the Licensed Products and Documentation for the protection of Customer’s networks in accordance with the terms of this Agreement.
   
   d. **Comparative Information** The criteria measured as part of a competitive analysis, including, but not limited to, performance, latency, usability, efficacy, effectiveness, identification, and detection capability, or comparison of a product’s capability to another product.
   
   e. **Documentation** User manuals regarding the Licensed Product and made available to Customer.
   
   f. **Fees** The Fees identified in the Order Form and any other Fees that may become due pursuant to this Agreement.
   
   g. **Installation Environment** The location of the data center at which the Licensed Products are hosted and accessed and as indicated on any Order Form as either Air Gap, Hosted, or On-Premises Data Share or On-Premises Private.
   
   h. **Licensed Product** As specifically indicated on any Order Form, the Licensed Product that is able to identify malicious content within Artifacts, as well as any Updates, Upgrades and new Versions that Lastline develops and makes available to Customer during the License Term.
   
   i. **Malicious Artifact** A file made available to Customer by Lastline for downloading individual Malicious Artifacts collected from the internet.
   
   j. **Order Form** Customer’s purchase order identifying the Licensed Products by SKU, complete product description and associated Fees (derived from the GSA Schedule pricelist) and incorporating the terms and conditions of this
Agreement by reference.

k. **Term License** The period of time that Customer is authorized to Use the Licensed Product, as set forth in the Agreement, and Fees are paid pursuant to the Order Form.

l. **Update** Enhancements, modifications, or improvements of the Licensed Product that contains bug fixes and/or minor enhancements or improvements that are made generally available by Lastline to its Customers for no additional license Fee. For clarification, Updates do not contain significant new features or functions that materially impact the performance and/or the nature of services rendered.

m. **Update Server** Lastline’s site on the internet from which Customer may download updates for Licensed Products including blacklists.
n. **Upgrades** A Version or upgraded Version of the Licensed Product that contains significant new features and is made generally available by Lastline to its Customers. Upgrades are only for items that do not require an additional license.

o. **Use** Authorized access to and Use of (without the right to modify) only the Licensed Products and Documentation as set forth in the Order Form and pursuant to the Agreement and solely for Business Purposes.

p. **User** The number of employees, contractors or individuals within an organization who Use or have the access to Use the Customer systems and networks on which Customer intends to Use the Licensed Product. A User who uses or has access to Customer systems and networks across multiple devices is nonetheless counted as a single User.

q. **Version** An update or upgrade of the Licensed Product that adds new functionality to the software.

**TERMS AND CONDITIONS**

2. **License Grant; Restrictions; Malware Artifact Access**
   
a. **License** Subject to the terms hereof, payment of all Fees, and in accordance with applicable User/Use limitations, Lastline hereby grants Customer a non-exclusive, non-transferable, limited Term License, without the right to sublicense, for Customer to Use the Licensed Products, in executable object code format only and the Documentation for Business Purposes. The Term License is limited to the term, number of Users and Installation Environment indicated on the Order Form. Customer agrees to notify Lastline at the time of renewal of any changes in the number of Users being protected or any changes to the Installation Environment.

   b. **Restrictions** Customer may not rent, lease, sell, transfer (by sublicense, assignment or otherwise), time share, modify, adapt, alter, translate, reproduce, copy, make derivative works from, distribute, publish, use to provide rental or service bureau services, or publicly display the Licensed Products or Comparative Information. Customer may only Use the Licensed Products and Documentation for Business Purposes. Customer may not reverse engineer, decompile, disassemble or otherwise attempt to discover or reconstruct the source code, underlying ideas, algorithms, programming interfaces or configuration files for the Licensed Products, except as may be allowed under applicable law and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to the respective owners. Customer may not use the Licensed Products or Documentation to build similar or competitive products. Customer may not publish or disclose to any third party any performance or benchmark tests, analyses, or any Comparative Information relating to the Licensed Products or the use thereof. Customer may not permit any person or entity to breach the restrictions in this Subsection 2b (Restrictions). Any future release, Update, Upgrade or Version to the Licensed Products or Documentation shall be subject to the terms of this Agreement, unless Lastline expressly states otherwise.

c. **Reservation of Rights** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly granted herein, Lastline and its suppliers and any Third Party Licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Licensed Product, to include the underlying software, the APIs, the Malware Artifacts and Documentation, and all copies, modifications and derivative works thereof. Customer acknowledges that it is obtaining only a limited Term License right to Use the Licensed Products and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement or otherwise.

d. **Third Party Code** The Licensed Products contain certain items of independent, third party code for which Lastline is required to provide attribution to the third party (“**Third Party Code**”). The Third Party Code is provided with certain third party data, information and feeds (collectively “Feeds”) that are owned by the applicable third party. The restrictions in Subsection 2b (Restrictions) apply to all such Feeds. A list of this Third Party Code is available at https://update.lastline.com/updates/distros/open-source-licenses.txt. Lastline represents that these Third Party Code providers will not diminish the license rights provided herein or limit Customer’s ability to Use the Licensed Product in accordance with the applicable Documentation, and neither the inclusion of Third Party Code in any Licensed Product or use of Third Party Materials will create any obligation on Customer’s part to license Third Party’s Code under any open source or similar license.

e. **Malware Artifacts Access** Customer has access to download individual Malicious Artifacts from the Licensed Product during the Term, Customer may download and Use the Malicious Artifacts solely for the purposes of testing the Licensed Products or research of the Malicious Artifact. Customer acknowledges and agrees that Customer shall only use the Malicious Artifacts in a secure and isolated lab environment. Customer assumes all risk and liability for using the Malicious Artifacts and Customer shall not distribute the Malicious Artifacts to any third parties or use the Malicious Artifacts for any purposes other than those identified herein.

3. **TERM**
   
a. **Term** Unless otherwise set forth on the Order Form, this Agreement will commence on the Effective Date and shall remain in full force unless earlier terminated (the “**Agreement Term**”).
b. **Licensed Product Term** The Licensed Product Term commences with the issuance of a license key and the license start date stated on the Order Form and expires on the end date set forth in the Order Form (“Initial Term”). Customer agrees to install the Licensed Product within 30 days of the license start date. Upon expiration of the Initial Term, the license for the Licensed Product may be renewed by Customer for successive 1-year terms by both parties executing a new Purchase Order, or option to an existing Purchase Order in writing, or a different period if so indicated on the Order Form for renewal (each a “Renewal Term”). The Initial Term and Renewal Term(s) shall be collectively referred to as the “License Product Term.”

4. **Confidentiality** The Licensed Product in source code form remains a confidential trade secret of Lastline and/or its suppliers. The Licensed Product is protected by the copyright and other intellectual property laws of the United States. Customer acknowledges that, in the course of using the Licensed Product, including the Software, Customer may obtain or learn information relating to the Licensed Product, which may include, without limitation, information relating to the performance, reliability or stability of the Licensed Product, operation of the Licensed Product, knowhow, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Lastline. Subject to the Freedom of Information Act, 5 U.S.C. § 552, during and after the term of this Agreement, Customer shall hold in confidence and protect, and shall not use (except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

5. **RESERVED.**

6. **Installation Environment/Third Party Software** When the Licensed Product is deployed in an On-Premises Installation Environment, Customer will be responsible for the cost of any third party software required to Use and enable deployments of the Licensed Product’s Sandbox functionality (e.g., Microsoft Windows, Microsoft Office). Information related to the third party software requirements is provided in the Documentation. If Customer accesses Lastline’s Malicious Artifacts, Customer is solely responsible for providing all equipment necessary for testing and researching the Artifact, including but not limited to, the secure and isolated lab environment.

7. **Additional Licenses** Subject to reasonable prior notice and upon Customer’s issuance of an Order Form for additional licenses, Lastline may increase the scope of Customer’s license to the Licensed Products.

8. **Provide Accurate Information** In consideration of Customer’s Use of the Licensed Products, Customer agrees to (i) provide true, accurate, current, and complete information about the number of Users as prompted by Lastline and (ii) maintain and promptly update the registration data to keep it truthful, accurate, current, and complete. Customer may receive account information (such as a username, password, API key or token) to use to access Customer’s account for the Licensed Product.

9. **RESERVED.**

10. **Support and Upgrades**
    a. **Support Service** Lastline will provide support to assist Customer in installing the License Products and achieving operational status for the Licensed Products in accordance with the Documentation. Additional application support services shall be made by mutual written agreement on: (i) the schedule for the performance of the additional services, (ii) Lastline’s Fees, if any, for the additional services, and (iii) any additional service terms and conditions that may be required and added by mutual consent as an Exhibit to this Agreement.
    b. **Software Upgrades** Lastline will periodically make available to Customer through the Lastline Update Server, Updates, Upgrades and current Versions of the Licensed Products which will include corrections, and/or enhancements, and/or improvements. These will be made available at no additional Fee to Customer with an active and fully paid Licensed Product in effect during their License Term. Release of these Updates, Upgrades, and current Versions may impact the on-going support and upgrades to previous Versions of the Licensed Product as outlined in the Lastline Software Lifecycle Policy available from the Lastline Customer Support Portal at [https://support.lastline.com](https://support.lastline.com), and as updated by Lastline from time to time, Customer is responsible for maintaining a currently supported Version for any On-Premises deployments of the Licensed Product(s), to include Hybrid, On-Premises and Air Gap Configurations.
    c. **Access to the Lastline Update Server** Lastline will use commercially reasonable efforts to make the Lastline Update Server accessible, but Lastline does not warrant or guarantee continuous availability.
    d. **Standard Term** Application support services and access to the Lastline Update Server are subject to this
Agreement’s terms and timely payment of all Fees.

11. RESERVED.

12. Warranty
   a. Performance Warranty For the duration of the License Product Term of an active and fully paid Lastline Licensed Product, Lastline warrants that the Licensed Products will perform substantially as specified in the Documentation. Lastline does not warrant that the Licensed Products or Documentation, will meet Customer’s requirements and expectations, that Licensed Products will be uninterrupted or error-free, or that the Licensed Products will protect Customer’s networks from specific threats.
   b. Remedy for Performance Warranty Breach Lastline’s sole obligation with respect to a breach of this Section 12 is to use commercially reasonable efforts to correct the breach. If Lastline is unable to correct the breach despite its use of commercially reasonable efforts, then Lastline will notify Customer and Customer may terminate this Agreement. In the event Customer terminates this Agreement, Lastline will issue to Customer a pro-rata refund of the prepaid fees based on the balance of the then-current Term remaining for the applicable Licensed Products. The foregoing remedy is Customer’s exclusive remedy and Lastline’s sole liability for a breach of the Warranty as set forth herein.
   c. Warranty Disclaimer Except as expressly provided herein, neither Lastline nor its third party licensors make any additional warranty with regard to the Licensed Product, including that of any of Lastline’s third party licensors and documentation. Customer expressly understands and agrees that to the extent permitted by applicable law, customer’s use of the malware artifacts is at customer’s sole risk and customer shall be solely responsible for any damage to customer’s property or person, including, but not limited to, damage to customer’s computer networks and systems or any other loss that results from accessing the malware artifacts. Customer acknowledges and agrees that, except as expressly provided herein, no additional warranties are made with regard to the malware artifacts collected from the internet. To the fullest extent allowed under applicable law, Lastline disclaims all other express, implied, and statutory warranties with regard to the Licensed Products including, but not limited to the implied warranties of merchantability, or fitness for a particular purpose. Lastline does not warrant that the Licensed Products will perform error free or without interruptions.

13. Limitation of Liability. In no event shall Lastline be liable for indirect, incidental, special or consequential damages (including costs of procurement of substitute goods) arising out of or relating to this agreement or any product or services, even if advised of the possibility of such damages. Lastline’s total liability arising out or relating to this agreement or any products or services will not exceed the amount paid for the Licensed product to which the claim relates, regardless of whether any remedy set forth herein fails of its essential purpose or otherwise. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733, and the foregoing limitation of liability shall not apply to personal injury or death resulting from Licensor’s negligence, or for any other matter for which liability cannot be excluded by law.

14. RESERVED.

15. Ownership Customer agrees that as a condition of its rights hereunder, Customer will not remove any product identification, copyright, proprietary or any other notices on the media, within the code and on all copies thereof, and on the Documentation, which appear on the media or within the code of the Licensed Products, and/or on all materials delivered by Lastline.

16. RESERVED.

17. Reserved.

18. Privacy Customer agrees to Lastline’s collection, use, and disclosure of information as set forth in Lastline’s attached Privacy Policy (“Privacy Policy”). Lastline uses Customer personal information only in connection with the administration of Customer’s account as set forth in the Privacy Policy. In a Hosted or Hybrid Installation Environment, Lastline uses information gained during the analysis of Artifacts to assess if a subject is malicious and will use and share that information regarding Malicious Artifacts and any malware samples collected in such analysis according to the terms of our Privacy Policy.

19. GENERAL PROVISIONS

a. **United States Government Restricted Rights** All Products are commercial in nature and developed solely at private expense. The Product(s) are delivered as Commercial Computer Software as defined in DFARS 252.227-7014 (June 1995) or as a commercial item as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Lastline’s Software License Agreement for such software. Technical data is provided with limited rights only as provided in DFARS 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

b. **Export** Customer is responsible for listing the country or countries in which any Lastline technology is deployed/used in the Order Form. Customer may not use, export, import, or transfer the Licensed Products and Documentation except as authorized by U.S. law, the laws of the jurisdiction in which Customer obtained the Licensed Products and Documentation, and any other applicable laws. In particular, but without limitation, the Licensed Products and Documentation, may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Person’s List or Entity List. By using the Licensed Products and Documentation, Customer represents and warrants that (i) Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country and (ii) Customer is not listed on any U.S. Government list of prohibited or restricted parties. Customer also will not use the Licensed Products, Documentation, or Malicious Artifacts for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. Customer acknowledges and agrees that products, services or technology provided by Lastline are subject to the export control laws and regulations of the United States. Customer shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Lastline products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.
LASTLINE PRIVACY POLICY

Effective Date: December 23, 2019

This Privacy Policy applies to our Service platform owned and operated by Lastline, Inc. ("Lastline") that uses our customer’s Personal Data only in connection with the administration of their account as set forth in this Privacy Policy (“Policy”). Lastline respects the privacy of our customers and is committed to protecting the Personal Data that they share with us. This Policy describes how Lastline collects, uses, shares, secures and processes information from the networks of our customers in the course of providing threat detection Services ("Services"), and outlines the ways in which our customers can control our use of that information. The use of information collected through our service shall be limited to the purpose of providing the service for which the Client has engaged Lastline.

Terms

- **Artifact** – means any potentially Malicious file, URL, email content, or other material collected by the Sensor or submitted by the Customer to the Licensed Product for analysis.
- **Artifact Sharing** – means the sharing of Suspicious and Malicious Artifacts with Lastline as determined by the product SKU purchased by the customer. Customers not wishing to share Suspicious or Malicious Artifacts with Lastline can purchase an On-Premises Private or On-Premises Air Gap deployment.
- **Benign** – Those Artifacts Lastline scores as 0-29.
- **Hosted** – The Licensed Product is installed in a hybrid deployment where the Lastline deployment leverages a multi-tenant Hosted platform installed in the Lastline Datacenter and sensors deployed at various sites in the customer’s network.
- **Malicious** – Those Artifacts Lastline scores as 70 or higher.
- **Meta data** – Is data that describes the Artifact and results of the analysis of the Artifact.
- **On-Premises Artifact Sharing** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s deployment shares information about Suspicious and Malicious Artifacts identified by their system with Lastline.
- **On-Premises Private** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s system does not share any Artifacts with Lastline but is capable of receiving information about Malicious Artifacts from Lastline.
- **On-Premises Air Gap** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s system shares no information with Lastline and does not receive any information about Malicious Artifacts from Lastline.
- **Personal Data** – means any information relating to an identified or identifiable natural person ("data subject") who can be directly or indirectly identified in particular by reference to an identifier, such as name, location etc.
- **Services** – Means the analysis of Artifacts provided by Lastline to Company.
- **Suspicious** – Those Artifacts Lastline scores between 30 and 69.
EU-U.S. Privacy Shield and Swiss-U.S. Privacy Shield

Lastline participates in, and has certified its compliance with, the EU-US. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. We are committed to subjecting all Personal Data received from European Union (EU) member countries and Switzerland, respectively, in reliance on each Privacy Shield Framework, to the Framework's applicable Principles. To learn more about the Privacy Shield Frameworks, and to view our certification, visit the U.S. Department of Commerce's Privacy Shield List. [https://www.privacyshield.gov]

Lastline is responsible for the processing of personal data it receives under each Privacy Shield Framework and subsequently may transfer it to a third party acting as an agent on its behalf. Lastline complies with the Privacy Shield Principles for all onward transfers of personal data from the EU and Switzerland, including the onward transfer of liability provisions.

With respect to personal data received or transferred pursuant to the Privacy Shield Frameworks, Lastline is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission. In certain situations, we may be required to disclose personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

If you have unresolved privacy or data use concerns that we have not addressed satisfactorily, please contact our U.S.-based third-party dispute resolution provider (free of charge) at https://feedback-form.truste.com/watchdog/request.

Under certain conditions, more fully described on the Privacy Shield website, you may be entitled to invoke binding arbitration when other dispute resolution procedures have been exhausted.

Lastline commits to cooperate with the panel established by the EU data protection authorities (DPAs) and the Swiss Federal Data Protection and Information Commissioner (FDPIC) and comply with the
advice given by such authorities with regard to human resources data transferred from the EU and Switzerland in the context of the employment relationship.

IN THE EUROPEAN ECONOMIC AREA
Contact us or our European GDPR Representative at the address below or by sending an email to security@lastline.com. Please include your contact information, the name of the Lastline product or website, and a detailed description of your request or privacy concern.

Mail to: Lastline UK Office, M/S: Lastline, Inc., C/O Hillier Hopkins LLP, Chancery House, 199 Silbury Boulevard, Milton Keynes, Bucks, England, MK9 1JL

Information the Lastline Product Collects

Lastline analyzes the traffic on a network and is designed to detect threats posed by malware, as well as communication with Malicious hosts on the internet. Lastline will collect and analyze certain Artifacts (files, URLs, as well as web and email content that could pose a threat to the organizations) that are transmitted via web traffic and as email attachments.

Lastline takes steps to avoid collecting information from our customer’s network that could personally identify their end users or collect or view any data that could be reasonably associated to such information. However, the data we collect through our Services to identify security risks may also contain some Personal Data (i.e. username, email address or IP address). This information is only used in protecting the IT infrastructure of the organization.

INFORMATION LASTLINE INSPECTS

Network traffic, including:

- The domain names resolved on the network including the host (IP Address) that resolved the domain.
- The content of some network connections that could pose a risk to an organization.
- Network flows to which Lastline network sensors have visibility.
- Executable programs, scripts, documents or other potential Artifacts that may contain executable code downloaded via the web (if Lastline network sensors are deployed) or sent as email messages and attachments (if Lastline email sensors are deployed).
  - This includes email headers and any potentially malicious content in the email body.
  - Refer to the Lastline Technical Support Knowledge Base for explicit details on files.
Lastline is able to analyze.

- In On-Premises deployments of Lastline product offerings, with Artifact Sharing enabled (default behavior), the following Artifacts are shared with Lastline:
  - Artifacts Lastline identifies and scores as Suspicious (30+) or Malicious (70+) [default; users customizable] are shared with Lastline for additional analysis.
These sharing options can be altered by the customer pursuant to their license agreement to expand file types shared with Lastline. (customers may refer to the Lastline Technical Support Knowledge Base or the user documentation for additional information regarding this functionality.)

Email contents, including:

- Header information from email messages inspected by the Lastline Sensor or submitted via the API.
- In hosted Deployments: Potentially Suspicious or Malicious Email Attachments
- On-Premises Artifact Sharing Deployments: Any submitted Suspicious and Malicious content.

**INFORMATION LASTLINE RETAINS**

- Alert information, as well as activity that could become an alert, is collected whenever a computer is attached to a customer’s network and performs Malicious activity for the purpose of providing organizations with meaningful reports regarding their security posture.
  - In On-Premises deployments, this data is stored on the local Manager, and not share with Lastline.
  - In Hosted deployments, this data is stored in the Lastline Data Center.
- Lastline will retain versions of all content submitted to the Lastline Hosted infrastructure, directly leveraging the UI or via the API. Artifacts are retained if submitted via the API, unless the delete after analysis flag has been set in the API call. Artifacts are always retained when submitted via the UI.
- For customers with a Hosted deployment, Lastline will retain all Artifacts captured by the Lastline Sensor as well as any file the user uploaded or has configured to be uploaded to the system.
- Lastline will generate and retain metadata as well as subsequent stage Artifacts generated during the Lastline analysis. This includes metadata about the file and behaviors observed during analysis, process snapshots, screenshots of analyzed content.
- Customers with On-Premises systems can use the configuration options provided in the product portal to view, manage, and disable information that should never be shared/transmitted to Lastline. All data is retained for customers with a Hosted deployment for 30 days after the term of the agreement.

**INFORMATION LASTLINE SHARES**

- Lastline will share the hashes and Meta data about Malicious Artifacts that are detected within a Hosted or On-Premises deployment (if Artifact Sharing is enabled).
  - Metadata about the file is not available to a customer, unless that customer’s Lastline deployment has analyzed the same Artifact, or the Artifact is publicly available on the Internet.
- Lastline may exchange some Malicious Artifacts and Artifact metadata submitted to the Lastline Platform with other cyber security vendors, with whom we have a confidentiality agreement, to allow both vendors to improve and enhance their respective technologies to defend against new threats or attack vectors.
  - Pursuant to the license agreement, Customers can opt-out of this level of sharing any Malicious Artifacts with Lastline by sending an email to support@lastline.com.

Information Lastline Collects
In order for a customer to license our products and obtain technical support Services, we will collect certain Personal Data, such as the first and last names of our contacts, mailing address (including postal code), email address, cell phone or work phone. This information is used only in connection with the administration of a customer’s account with Lastline and for no other purpose.

For the purpose of marketing activities, we may collect the following Personal Data from you: name, title, location, company name, phone number and email address via our website, if you wish to request some types of product or company related content, a product demo or contact us for other reasons.

If you believe that we have inappropriately collected your Personal Data and you would like to request that it be removed from our databases, please contact our Data Protection Officer at privacy@lastline.com.

USER DATA SUPPLEMENTATIONS

We may receive information about you from other sources, including publicly available databases or third parties from whom we have purchased data and may combine this data with information we already have about you. This is to help us update, expand and analyze our records, identify new customers, and provide products and Services that may be of interest to you. If you provide us Personal Data about others, or if others give us your information, we will only use that information for the specific purpose for which it was provided to us.

Examples of the types of Personal Data that may be obtained from public sources or purchased from third parties and combined with information we already have about you, may include:

- Address information about you from third party sources, such as the U.S. Postal Service, to verify your address so we can properly send necessary correspondence.
- Purchased marketing data about our prospects or customers from third parties that is combined with information we may already have about you to create more tailored information about our products.

In order to opt-out of our marketing communications, please send a request to our Data Protection Officer at privacy@lastline.com.

HOW WE USE THE DATA WE COLLECT
Lastline does not sell, trade or rent to third parties any of the information we collect from our customer’s network, or Personal Data (together “the Data”). We may use the Data that we collect for the following purposes:

- To provide our customers with our Services;
- To provide our customers with customized content;
- To process and respond to inquiries related to the Services or to our customer’s account;
- To provide our customers with important notices relating to the Services, including scheduled downtime and updates to the software;
- To provide, maintain, protect and improve our Services; and
- To protect Lastline and our customers.

Tracking Technologies

Lastline and its partners use cookies or similar technologies to analyze trends, administer the website, track users’ movements around the website, and to gather demographic information about our user base as a whole. You can control the use of cookies at the individual browser level, but if you choose to disable cookies, it may limit your use of certain features or functions on our website or service.

As is true of most websites, we gather certain information automatically. This information may include Internet protocol (IP) addresses, browser type, Internet service provider (ISP), referring/exit pages, the files viewed on our site (e.g., HTML pages, graphics, etc.), operating system, date/time stamp, and/or clickstream data to analyze trends in the aggregate and administer the site.

We partner with a third party to implement marketing programs promoting Lastline and our products on third-party websites using cookies or similar technology. As part of this process we do not collect any Personal Data about website visitors. Anyone can remove themselves from these programs simply by erasing the cookies on their computer. Please note that you will continue to receive generic ads on some websites other than Lastline.com; this is outside of the control of Lastline.

The use of cookies by our partners, affiliates, tracking utility company, and service providers is not covered by this Policy. We do not have access or control over these cookies. Our partners, affiliates, and
service providers use session ID cookies to understand usage patterns on the website. These companies are obligated to protect our customer’s Personal Data in accordance with their own policies, and Lastline is not responsible for the privacy practices of other companies’ websites or Services to which our products and Services may link or otherwise refer.

In order to personalize communications with our customers and to improve our Services, we may also ask you to provide consumer satisfaction information regarding your experience with our Services. You have the option of choosing not to provide that information.

Third Party Partners

To provide the Lastline Hosted and some On-Premises Services, we may share submitted Artifacts and other meta data with third parties that provide Services, such as information processing, data storage and security Services, for instance Cloud hosting and data service providers. These third parties are only authorized to use our customer’s data as necessary to provide Services to Lastline and are obligated to protect our customer’s network data with provisions at least as protective as those contained in this Policy, and each such provider has security measures in place at least as protective as those described in this Policy.

SHARING WITH SERVICE PROVIDERS

We may share your information with third parties who provide services on our behalf to help with our business activities. These companies are authorized to use your Personal Data only as necessary to provide these services to us. These services may include:

- Delivering letters or packages
- Payment processing
- Providing customer service
- Sending marketing communications
- Conducting research and analysis
- Providing cloud computing infrastructure
Legal Notice
We may disclose your Personal Data as required by law, such as to comply with a subpoena or other legal process, when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request.

If Lastline is involved in a merger, acquisition, or sale of all or a portion of its assets, you will be notified via email and/or a prominent notice on our website of any change in ownership, uses of your Personal Data, and choices you may have regarding your Personal Data.

We may also disclose your Personal Data to any other party with your prior consent.

Protection of Personal Data

Lastline takes precautions, including administrative, technical, and physical measures, to safeguard our customer’s Data against loss, theft, and misuse, as well as against unauthorized access, disclosure, alteration and destruction.

Lastline uses industry-standard efforts to safeguard the confidentiality of Data, including encryption, firewalls and SSL (Secure Sockets Layer). We have implemented reasonable administrative, technical, and physical security controls to protects against the loss, misuse, or alteration of our customer’s Data.

Lastline as a Service Provider

Lastline collects information under the direction of its customers and has no direct relationship with the individuals whose Personal Data it processes. If you are an employee or client of one of our customers and have questions, please contact your IT Security Team or Managed Service Provider for additional information. We may transfer contact information of customers and prospects to companies that help us provide our Service. Transfers to subsequent third parties are covered by the service agreement with our customers.
Lastline acknowledges that you have the right to access your Personal Data. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct their query to our customer (the data controller). If requested to remove data, we will respond within a reasonable timeframe.

Access & Data Retention

Upon request, Lastline will provide you with information about whether we hold any of your Personal Data. If you wish to correct, amend, cancel your account or request that we no longer use your information to provide Services, you may contact us at: info@lastline.com. We will respond to your request within a reasonable timeframe. We will retain your information for as long as your account is active or as needed to provide you with our Services. We will retain and use your information only as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

Newsletter Preferences

You may sign up to receive an email or newsletter or other communications from us. If you would like to discontinue receiving this information, you may update your email preferences by using the “Unsubscribe” link found in emails we send to you or at your member profile on our website or by contacting us at support@lastline.com.

Notification of Privacy Policy Changes

We may update this Policy from time to time to reflect changes to Lastline’s information practices. If we make any material changes, we will notify you by email (sent to the email address specified in your account) or by means of a notice on this website prior to the change becoming effective. We encourage our customers to periodically review this page for the latest information on our privacy practices.

Lastline, Inc.
1825 S. Grant St., Suite 635 San Mateo, CA 94402

privacy@lastline.com
LOGRHYTHM, INC.
4780 PEARL EAST CIRCLE
BOULDER, CO 80301

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
LOGRHYTHM, INC.

LOGRHYTHM, INC. LICENSE, WARRANTY AND SUPPORT TERMS

These Terms and Conditions (the "Agreement") set forth the terms and conditions agreed to by LogRhythm, Inc. ("LogRhythm") and the Customer identified on the Order to which this Agreement is attached and incorporated ("Customer") under which Customer may license the software and purchase the hardware specified on the Order and other purchase orders submitted by Customer and accepted by LogRhythm. No Order shall be binding upon LogRhythm until accepted by LogRhythm in writing. In consideration of the mutual covenants and conditions set forth below, LogRhythm and Customer agree as follows:

1. DEFINITIONS.

1.1 "Appliance" means the appliance listed on an Order comprised of the Hardware and the Software installed on the Hardware.

1.2 "Documentation" means the user manuals provided to Customer with the Software or an Appliance in either electronic, online help files or hard copy format. All Documentation is provided in English.

1.3 "Delivery Date" means the date of delivery of the Appliance or the Software only, as applicable.

1.4 "Effective Date" means the date the Order was signed.

1.5 "Intellectual Property Rights" means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.

1.6 "Hardware" means the hardware purchased from LogRhythm as set forth on an Order.

1.7 "Software" means the LogRhythm software programs identified in an Order, all Documentation for the Software, and any Updates (as defined in Exhibit A) that LogRhythm may provide to Customer in connection with Support Services.

2. SOFTWARE LICENSE GRANT AND OTHER RIGHTS.

2.1 Software License Grant. Subject to the terms and conditions of this Agreement, LogRhythm grants to Customer a perpetual, non-exclusive, non-transferable license to use the Software, solely for internal business purposes in accordance with the Documentation and the limitations set forth in the Agreement. If Customer has purchased an Appliance, then the Software may only be used on the Hardware on which the Software has been installed. If Customer licenses the Software for use in a virtual environment each virtual instance requires its own software license. Customer may make a copy of the Software as necessary for back up and disaster recovery purposes.

2.2 Restrictions On Use. Except as expressly permitted by this Agreement, Customer will not (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, distribute, sell or otherwise transfer the Software to any third party; (c) use the Software in any service bureau or time sharing arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or (e) otherwise use or copy the Software except as expressly permitted in Section 2.1.

2.3 License Keys. Customer acknowledges that the Software uses a license key mechanism and that use of the Software on a perpetual basis (as opposed to a temporary basis for evaluation purposes) requires authorized and valid license keys ("License Keys") that must be installed by Customer. Customer agrees not to use unauthorized license keys or otherwise circumvent LogRhythm's license key mechanism. LogRhythm will provide the License Keys upon payment in full of all applicable Fees. If LogRhythm has not received the License Fee payment from Customer within the payment time period set forth in Section 5.6, LogRhythm will not be obligated to provide Customer with the License Keys and the Software will cease functioning unless Customer requests and obtains an extension of the evaluation period from LogRhythm.

2.4 System Files. All system files, including SQL Server database files and transaction logs, used by an Appliance must reside on either the Appliance or an external storage device purchased from LogRhythm ("Supported Equipment"). Notwithstanding the foregoing, system files do not include LogRhythm archive files.

3. DELIVERY, INSPECTION AND INSTALLATION.

3.1 HARDWARE PURCHASE AND DELIVERY. If Customer is purchasing Hardware, then, subject to terms and conditions of this Agreement, Customer hereby agrees to purchase the Hardware from LogRhythm, and LogRhythm hereby agrees to sell the Hardware to Customer, pursuant to the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

3.2 License of Software Only. If Customer is licensing the Software and not purchasing Hardware, then this Section 3.2, the terms and conditions of the Multiple Award Schedule 70 contract and the task/delivery order will govern the delivery of Software. If Customer has not already obtained a copy of the Software prior to the Effective Date, LogRhythm will ship to Customer the Software and Documentation and/or provide Customer a support account from which Customer can download the Software and Documentation in accordance with LogRhythm's reasonable instructions. Customer is responsible for configuring customer provided hardware or virtual environment in accordance with the configuration parameters as noted in the Documentation. Improper hardware or virtual environment configuration may prevent the Software from operating properly and any such nonstandard configuration may not be supported by LogRhythm.

3.3 Software Delivery. Without limiting the warranties in Section 6.1 below, the Software will be deemed delivered the day the License Key is provided to Customer. Unless otherwise mutually agreed to in writing, Customer is responsible for installing the Software and License Keys in accordance with the Documentation.

4. MAINTENANCE; DEPLOYMENT; TRAINING.

4.1 Maintenance. Customer may obtain technical support and Software maintenance described in Exhibit A attached to this Agreement and incorporated herein ("Support Services") in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 Contract. Upon termination of Support Services Customer may continue to use the Software without the benefits provided under the Support Services Exhibit.

4.2 Professional Services. Subject to the terms and conditions of this Agreement, including the payment by Customer of the professional service fees ("Professional Service Fees") set forth in an Order, LogRhythm will provide to Customer the professional services...
described in Exhibit B attached to this Agreement and incorporated herein ("Professional Services"). Customer must use any contracted Professional Services within one year of the Effective Date.

4.3 Training. Subject to payment of any training fees ("Training Fees"), Customer may obtain training services from LogRhythm in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

5. FEES AND PAYMENT.

5.1 Fees. Customer will pay LogRhythm the applicable Appliance price ("Appliance Fee") or Software license fees ("License Fees" and collectively, "Fees") as set forth in and in accordance with the applicable Order. All Fees are nonrefundable unless otherwise expressly stated herein.

5.2 Professional Service Fees. Customer will pay the Professional Services Fees set forth in and in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

5.3 Support Services Fees. Customer will pay the Support Services Fees as set forth in the terms and conditions of the Multiple Award Schedule 70 contract.

5.4 Additional Orders. Customer may order more Appliances, Software product modules and additional usage of the Software as permitted under this Agreement by executing the LogRhythm Order in addition to submitting written purchase orders to LogRhythm in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

5.5 Records. Customer will maintain complete and accurate records of its use of the Software and all other data reasonably necessary for verification of compliance with this Agreement.

5.6 Audit Rights. LogRhythm will have the right, during normal business hours, in accordance with United States Government security requirement and upon at least five (5) days prior written notice, to have an independent audit firm selected by LogRhythm audit Customer’s records relating to Customer’s activities pursuant to this Agreement in order to verify that Customer has complied with the terms of this Agreement. The audit will be conducted at LogRhythm’s expense. LogRhythm may submit a request for payment of alleged owed amounts in accordance with the terms and conditions of the Multiple Award Schedule 70 Contract. Such audits will be conducted no more than once in any period of twelve (12) consecutive months.

6. WARRANTY; DISCLAIMER.

6.1 Software Warranty. For a period of ninety (90) days after the Effective Date (the “Software Warranty Period”), LogRhythm warrants that the Software, when used in accordance with the instructions in the Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant the Customer’s use of the Software will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation, correct any reproducible error in the Software reported to LogRhythm by Customer in writing during the Software Warranty Period. If LogRhythm determines that it is unable to correct the error or replace the Software, LogRhythm will refund to Customer all License Fees and Support Service Fees actually paid for the defective Software, in which case this Agreement and Customer’s right to use the Software will terminate.

6.2 Hardware and Third Party Software Warranty. All Hardware and third party software is provided to Customer under the applicable warranty for such Hardware or third party software that is made available from the Hardware manufacturer or third party software licensor. LogRhythm provides no warranties directly to Customer for any Hardware or third party software.

6.3 Disclaimers. THE EXPRESS WARRANTIES IN SECTION 6.1 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, HARDWARE AND SUPPORT SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WHICH ARE HEREBY DISCLAIMED.

7. INFRINGEMENT CLAIMS.

7.1 Indemnity. LogRhythm will pay those costs and damages finally awarded against Customer in any such action, brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Customer shall give LogRhythm sole control of the defense of any such claim and any related settlement negotiations unless the Department of Justice ("DOJ")jurisdictional statutes (28 USC 516) grants the right to defend the Government with the DOJ, and consequently the right to exercise sole control, solely in the DOJ. In such cases, Customer and the DOJ shall consult with LogRhythm regarding any such claim and LogRhythm shall have the right to intervene in the proceedings at its own expense through counsel of its choice.

7.2 Injunction. If the Software becomes, or in LogRhythm’s opinion is likely to become, the subject of an infringement claim, LogRhythm may, at its option and expense, either (a) procure for Customer the right to continue using the Software, (b) replace or modify the Software so that it becomes non-infringing and remains functionally equivalent, or (c) accept return of the Software and refund Customer the Software Fees paid for such Software upon such termination, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date.

7.3 Exclusions. Notwithstanding the foregoing, LogRhythm will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (a) any use of the Software not in accordance with this Agreement or the Documentation, (b) any use of the Software in combination with other products, hardware, equipment, software, or data not authorized by LogRhythm to be used with the Software, (c) any use of any release of the Software other than the most current release made available to Customer, or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LOGRHYTHM’S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE AND ANY SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO LOGRHYTHM DURING THE TWELVE (12) MONTH PERIOD PREceding THE EVENTS GIVING RISE TO SUCH LIABILITY. IN ADDITION, LOGRHYTHM DISCLAIMS ALL LIABILITY OF ANY KIND OF LOGRHYTHM’S LICENSORS. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO BREACH OF Sections 9 OR ANY INDEMNITY OBLIGATIONS IN Section 7. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO EXPRESS OR IMPLYING RELIEF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR OR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE.
9. **CONFIDENTIALITY.**

9.1 **Confidential Information.** “Information” means information that is disclosed by a party (“Discloser”) to the other party (“Recipient”), or which Recipient has access to in connection with this Agreement, and that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Information includes, without limitation, information of or relating to the Discloser’s present or future products, know-how, formulas, designs, processes, ideas, inventions and other technical, business and financial plans, processing information, pricing information, specifications, research and development information, customer lists, the identity of any customers or suppliers, forecasts and any other information relating to any work in process, future development, marketing plans, strategies, financial matters, personnel matters, investors or business operations of the Discloser.

9.2 **Protection of Information.** Recipient will not use any Information of Discloser for any purpose not expressly permitted by the Agreement, and will disclose the Information of Discloser only to the employees or contractors of Recipient who have a need to know such Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than Recipient’s duty hereunder. Recipient will protect Discloser’s Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

9.3 **Exceptions.** Recipient’s obligations under Section 9.2 with respect to any Information of Discloser will terminate if such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser’s Information. In addition, Recipient will be allowed to disclose Information of Discloser to the extent that such disclosure is (i) approved in writing by Discloser, (ii) necessary for Recipient to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser’s request and expense, in any lawful action to contest or limit the scope of such required disclosure.

9.4 **Return of Information.** Except as otherwise expressly provided in this Agreement, Recipient will return to Discloser or destroy all Information of Discloser in Recipient’s possession or control and permanently erase all electronic copies of such Information promptly upon the written request of Discloser upon the expiration or termination of the Agreement. Recipient will certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 9.4.

10. **TERM AND TERMINATION**

10.1 **Term.** The term of the Agreement will begin on the Effective Date and will continue until terminated.

10.2 **Termination for Breach.** Termination may only be conducted in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

10.3 **Effects of Termination.** Upon termination of this Agreement, Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer’s computers, and return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer’s possession or control. Sections 1, 2.2, 5.3, 7, 8, 9, 10.3 and 11 together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

11. **GENERAL**

11.1 **Proprietary Rights.** The Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of LogRhythm and its licensors. All rights in and to the Software not expressly granted to Customer in this Agreement are reserved by LogRhythm and its licensors. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of LogRhythm or its licensors on the Software or the Documentation.

11.2 **Third Party Software.** All third party software included with an Appliance is subject to the third party license agreements and/or additional terms and conditions provided with the Appliance that are imposed by LogRhythm’s applicable third party manufacturers and licensors. Customer agrees that Customer will be bound to and comply with all such applicable license agreements and terms and conditions.

11.3 **Compliance with Laws.** Each party will comply with all applicable export and import control laws and regulations in its use of the Software and Appliances and, in particular, Customer will not export or re-export Software or Appliances without all required government licenses and Customer agrees to comply with the export laws, restrictions, national security controls and regulations of the all applicable foreign agencies or authorities.

11.4 **Assignment.** Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under the Agreement (including the license rights granted to Customer to the Software) to any third party without the other party’s prior written consent, which consent will not be unreasonably withheld or delayed.

11.5 **Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

11.6 **U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software is comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

11.7 **Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic mail, facsimile (fax), or by certified mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the Order, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

11.8 **Governing Law and Venue.** This Agreement and all Statements of Work will be governed by and interpreted in accordance with applicable Federal laws. If it is in the best interests of the Government, any action or proceeding arising from or relating to this Agreement shall be brought in a Federal District Court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.
11.9 **Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.10 **Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

11.11 **Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

11.12 **Entire Agreement.** This Agreement, the Multiple Award Schedule 70 contract and the task/delivery order constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.
12. Exhibit A
13. Support Services
14. Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm ("Agreement"), the terms and conditions of the Multiple Award Schedule 70 contract and this Support Services exhibit (including payment of the applicable fees ("Support Fees"), LogRhythm will provide the Support Services in accordance with the terms and conditions set forth below. Customer must purchase identical Support Services for all installed Software and/or Appliances within a Designated Deployment (defined below) and may not select different Support Services options to cover different installations of Software and/or Appliances across deployments within a Designated Deployment. LogRhythm will be responsible for providing Support Services only for the most current release and the immediately preceding major release of the Software. End-of-Life Support for third party optional software components are in accordance with the End-of-Life policy for each such component as announced. LogRhythm reserves the right to modify its Support Services offering at any time, by providing notice to its Customers, provided such Support Services modification will not be less than what is stated in this Support Services Exhibit and the modification is agreed to in writing and signed by an authorized Government Contracting Officer.

1. DEFINITIONS.
1.1 “Business Day” means 7:00 a.m. to 6:00 p.m. (Mountain Time), Monday through Friday (excluding LogRhythm holidays).
1.2 “Designated Deployment” shall mean the deployment of the LogRhythm Software that enables complete logging and processing of Customer data.
1.3 “Enhanced Support Services” shall mean the optional purchase by Customer of 24/7 support subject to the payment of any required additional fees.
1.4 “Error” shall mean a reproducible defect in the Supported Program when operated on a Supported Environment, which causes the Supported Program not to operate substantially in accordance with the Documentation.
1.5 ‘Resolution” shall mean a modification or workaround to the Supported Program and/or Documentation and/or other information provided by LogRhythm to Customer intended to resolve an Error.
1.6 “Support Hour” shall mean an hour during a Business Day.
1.7 “Supported Environment” shall mean any hardware and operating system platform which LogRhythm supports.
1.8 “Supported Program” shall mean the current version of the Software used in a Supported Environment in use at the Designated Deployment, for which Customer has paid the then current Support Fees.
1.9 ‘Update” means subsequent minor maintenance releases of the Software (e.g., 3.1 to 3.2) and patches that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm. Updates shall not include any release, option or future product which LogRhythm licenses separately from Support Services for an additional fee.
1.10 “Upgrade” means subsequent major releases of the Software (e.g. 2.0 to 3.0) that LogRhythm generally makes available for Software licenses at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm.

2. SERVICES PROVIDED.
2.1 First Call. LogRhythm is the first tier of support for the Software and Hardware purchased through LogRhythm.
2.2 Telephone Support. LogRhythm will provide telephone support to the designated users during the Support Hours. Customer understands and acknowledges that Support Services are provided in English. Customers purchasing Enhanced Support Services will be given instructions for receiving Support Services after the end of a Business Day. Telephone support will include the following:
(a) Assistance in identifying and verifying the causes of suspected Errors in the Supported Program;
(b) Advice on bypassing identified Errors in the Supported Program, if reasonably possible;
(c) Assistance in troubleshooting and identifying Hardware-related problems;
(d) Clarification of the Documentation; and (e) Guidance in updates of the Supported Program. 2.3 E-Mail Support. Customers may contact LogRhythm support via email 24 hours a day, 7 days a week. Support emails may be sent to support@logrhythm.com.
2.4 Response Times.
(a) LogRhythm will respond to new support cases whether received via a telephone call or email within (i) four (4) Support Hours after receipt if received during a Business Day or (ii) by 12:00 p.m. Mountain Time the following Business Day if received after the end of a Business Day. LogRhythm will respond to new support cases via email or by directly contacting the applicable designated users. Response times for open support cases will vary depending on the specifics of the case and any Escalation required. If a response will require more than one business day to prepare, Customer will be notified and informed when a response can be expected.
(b) If Customer has purchased Enhanced Support Services LogRhythm will respond to new support cases received via a telephone call within four (4) hours after receipt.
2.5 LogRhythm Support Site. LogRhythm maintains a product support site containing product manuals and additional support related information (e.g., FAQ’s, Knowledge Base) Subject to the payment of Support Fees, Customer will be provided 24/7 access to the support site. Customer will be provided support accounts to use when accessing the support site.
2.6 Escalation and Severity Levels. All calls are received by Tier 1 or Tier 2 support personnel. LogRhythm’s best attempts are made to solve support issues with Tier 1 support personnel. Issues that are not able to be resolved by the Tier 1 support personnel will be escalated as outlined below:
(a) Tiered Support Definitions: Support requests will be answered and/or escalated based on the following generalized criteria. The Tier I support engineer will be the first contact and will determine escalation if an issue is not solved within 1 hour. Additional escalation will be issue specific and will remain within current contractual guidelines:

<table>
<thead>
<tr>
<th>Tier I – General questions and minor configuration changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier II – Functionality specific questions, advanced configuration changes and initial error investigation</td>
</tr>
</tbody>
</table>

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### Support Ticket Escalation:

Support calls are generally not escalated if work is under way and/or a solution is being researched or created. However, severity levels are designed as means to provide escalation in cases of an inability to make systems operational as outlined below.

#### (c) **Ticket Severity:**

<table>
<thead>
<tr>
<th>Severity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Critical (Severity 1)</strong></td>
<td>The system has crashed or is in a “hung” state, or displays a fatal error - resulting in data loss or corruption.</td>
</tr>
<tr>
<td><strong>High (Severity 2)</strong></td>
<td>System is severely degraded such that a component or feature does not meet requirements or are inaccessible or inoperable.</td>
</tr>
<tr>
<td><strong>Medium (Severity 3)</strong></td>
<td>System is slightly degraded such that a component or feature does not meet minimum or expected requirements.</td>
</tr>
<tr>
<td><strong>Low (Severity 4)</strong></td>
<td>System is functional with a minor defect or customer has general question or is requesting minor configuration change information.</td>
</tr>
</tbody>
</table>

### 2.7 Support Cases.

Each support case will be assigned a case number. Customer must provide the number when providing communications to LogRhythm regarding the support case. Support cases will be closed when Customer has verified the issue is resolved, where possible. Support cases will also be closed after three (3) Business Days of inactivity on the part of Customer and can be re-opened upon request.

#### 2.9 Unqualified Support Cases.

Unqualified support cases include questions that could have been answered by reviewing LogRhythm Documentation or information made available via the LogRhythm support site. If Customer is submitting a high volume of Unqualified Support Cases, LogRhythm and Customer will work together to determine the areas of operation underlying the cases submitted and will jointly determine a corrective course of action as required.

### 2.11 Exceptions.

LogRhythm shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer’s modification or combination of the Supported Program (in whole or in part), (b) use of the Supported Program in an environment other than a...
Supported Environment; or (c) problems related to non-LogRhythm provided hardware. Any corrections performed by LogRhythm for such Errors shall be made, in LogRhythm’s reasonable discretion, at LogRhythm’s then-current time and material charges.

3. SOFTWARE SUPPORT. Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:

3.1 Updates. LogRhythm will provide Updates for the Supported Programs as and when developed for general release in LogRhythm’s sole discretion. Each Update will consist of a set of programs and files made available from LogRhythm’s web site and will be accompanied by Documentation adequate to inform Customer of the problems resolved and any significant operational differences resulting from such Update.

3.2 Upgrades. Customer will be entitled to major Software release upgrades (e.g., 2.0 to 3.0) at no additional cost while a Support Services contract is in effect. An upgrade to LogRhythm provided Hardware may be required in order to utilize any such Upgrades.

3.3 Third-Party Software Updates. LogRhythm approves and makes available information regarding Updates of Third Party software included in the Software to Customers via LogRhythm’s web site support.

3.4 Knowledge Base Updates. Customer will be entitled to knowledge base updates at no additional cost.

4. HARDWARE SUPPORT. Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:

4.1 Basic Hardware Services. As part of Support Services, LogRhythm will facilitate Hardware warranty coverage with the Hardware manufacturer on servers and their components for a period of three (3) years after delivery for Hardware purchased through LogRhythm.

(a) If Hardware is replaced in whole or in part under a warranty program Customer will be responsible for the cost of any Hardware or components not returned as may be required to comply with the warranty.

(b) Modification, alteration, or any other changes to the Hardware may violate and/or void the Hardware warranty and/or Support Services agreement. In no instances should Customer open the external case of the Hardware without direction from LogRhythm personnel.

(c) Hardware shipped to customer will support the release of the Software installed on the Hardware at time of delivery and the next major release. If a second or subsequent major release of the Software requires an upgrade to the Hardware, Customer may choose to either (i) upgrade the Hardware at their cost and install the second or subsequent major release or (ii) receive Support Services on their current Hardware and Software through the life cycle of the second or subsequent major release.

(d) Hardware upgrades for enhancements to Software features included in Customers initial Software release will be provided by LogRhythm. Hardware upgrades to support new Software features provided to customer via a Software Upgrade or Update will not be provided by LogRhythm and Customer, at its option, may upgrade the Hardware to utilize such new Software features.

4.2 Enhanced Hardware Services. Hardware that is subject to an Enhanced Support Services agreement will be provided with 24/7 support with 4-hour onsite response, after troubleshooting.

4.3 Extended Warranty. Upon Customer’s renewal of Support Services in years four (4) and five (5); LogRhythm will facilitate an extended hardware warranty service for each of those years, provided such warranty service is offered by the hardware manufacturer. Hardware warranty services beyond year five (5) will continue to be facilitated by LogRhythm provided such are offered at the discretion of the hardware manufacturer.

4.4 Pre-Replacement of Defective Hardware. Hardware warranty repairs will be made in accordance with the Basic Hardware Services or Enhanced Hardware Services as contracted by Customer. Replacements for defective Hardware to be provided to Customer under the warranty program will be sent on a pre-replacement basis when possible. Customer will have ten (10) business days to return to the defective Hardware to LogRhythm. If the replacement of a complete Appliance is required, the replacement Appliance will be shipped fully configured for Customer’s use unless an alternative course of action is mutually agreed upon by LogRhythm and Customer.

5. CUSTOMER RESPONSIBILITIES.

5.1 Supervision and Management. Customer is responsible for undertaking the proper supervision, control and management of its use of the Supported Programs, including, but not limited to: (a) assuring proper Supported Environment configuration, Supported Programs installation and operating methods; and (b) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.

5.2 Training. Customer is responsible for ensuring that all appropriate personnel are trained and familiar with the operation and use of the Supported Programs and associated equipment.

5.3 Designated Users. Customer shall designate a reasonable number of individuals to serve as the designated users with LogRhythm for the Support Services provided hereunder. To receive notification of any new Updates available from LogRhythm Customer must subscribe to the LogRhythm user forums.

5.4 Access to Personnel and Equipment. Customer shall provide LogRhythm with access to Customer’s personnel and, at Customer’s discretion, its equipment during Support Hours. LogRhythm will, to the best of its ability, provide Support Services to Customer in accordance with Customer’s internal security and/or network access policies. If Customer requests Support Services for an Error that requires remote access and Customer is unable to provide such access, then the Government Contracting Officer may elect to pay LogRhythm additional Support Fees and Expenses incurred for onsite Support Services so long as the additional Support was agreed to in writing by an authorized Government Contracting Officer prior to the services being rendered. If Customer does not wish to pay for such onsite Support Services, LogRhythm’s obligation to provide any Resolution for the Error shall be excused.

5.5 Customer Introduced Third-Party Software. Customer may elect to install additional software on to the Hardware on the drive specified in the LogRhythm Documentation. It is recommended that Customer contact LogRhythm before installing any software on to the Hardware. In such instance, Customer acknowledges and assumes the risk that (a) LogRhythm is not responsible for the functionality of any such software; (b) LogRhythm reserves the right to require the removal of any and all such software when addressing support issues (failure to remove such software after requested by LogRhythm will void LogRhythm’s Support Service obligations); (c) any such installation may negatively impact the performance, reliability and/or security of the Software and/or Hardware; (d) the Software may not perform as intended or in accordance with the LogRhythm Documentation; and (e) any such software which adversely affects the performance of the LogRhythm Appliance will void all warranties and cancel all Support Services obligations.

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EXHIBIT B LOGRHYTHM PROFESSIONAL SERVICES ATTACHMENT

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm to which this Exhibit B is attached and incorporated therein (“Agreement”), the terms and conditions of the Multiple Award Schedule 70 contract and this Professional Services Attachment (including payment of the applicable fees, LogRhythm will provide the Professional Services in accordance with the terms and conditions set forth below.

1. Scope of Services. LogRhythm will provide the Professional Services to Customer under this Professional Services Attachment (“PSA”). At the start of the deployment planning, Customer and LogRhythm will develop a mutually agreed upon deployment plan that will be detailed in one or more Statements of Work (“SOW”) (the “Services”). Deployment Services include but are not limited to the process of configuring the Software and/or Appliance and deploying in Customer’s environment.

2. Assumptions and Responsibilities

2.1 Assumptions. The following assumptions are hereby acknowledged by the parties and apply to the performance of the Services under this PSA:

(a) Changes to this PSA will be documented using a Project Change Request form in accordance with the process outlined in this PSA.
(b) Customer will ensure that data backup is performed. LogRhythm will not be responsible for the loss or corruption of any Customer data or for any system downtime. Except as may be purchased under a separate LogRhythm Services Agreement, LogRhythm will not be responsible for any application or host system access that encompasses coding, scripting, application analysis, system performance, troubleshooting, or applications logsins outside of the Services described in this PSA.
(c) LogRhythm reserves the right to subcontract any or all portions of the Services that LogRhythm is obligated to perform under this PSA.
(d) LogRhythm will submit written or verbal status reports on the Services being performed under this PSA as necessary and mutually agreed upon by Customer and LogRhythm.
(e) LogRhythm will provide a Project Lead with the qualifications, expertise, and knowledge to fulfill LogRhythm’s obligations under this PSA, as necessary and applicable to the PSA requirements of Section 1.
(f) Customer Responsibilities. LogRhythm will provide the Professional Services either onsite at the Customer facilities or remotely, via a remote desktop session. Services not requiring presence onsite may be performed at LogRhythm facilities by mutual agreement between Customer and LogRhythm.

2.2 LogRhythm Responsibilities. Performance of the Services includes, without limitation, LogRhythm’s undertaking of the following responsibilities as reasonably applicable to the Services being performed under this PSA:

(a) LogRhythm will use commercially reasonable efforts to complete the Services described in this PSA in a timely manner.
(b) LogRhythm will perform all appropriate services either onsite at the Customer facilities or remotely, via a remote desktop session. Services not requiring presence onsite may be performed at LogRhythm facilities by mutual agreement between Customer and LogRhythm.

2.3 Customer Responsibilities. Completion of the contingent upon Customer fulfilling the following responsibilities:

(a) Customer will complete all necessary facility arrangements prior to the commencement of the Services which will include but not be limited to such items as power, network connections, floor space, and cooling. Such required facility arrangements must be in place for the duration of this PSA.
(b) Customer will make knowledgeable staff available to LogRhythm promptly upon a request via pager, telephone, or cell phone to provide background information and clarification of information required to perform the Services outlined in this PSA.
(c) Customer will provide a Project Lead with the requisite qualifications, expertise, and knowledge who is authorized by Customer to act as a liaison between Customer and LogRhythm and assume the responsibilities detailed in Section 2.4.
(d) Customer Responsibilities. Customer will ensure that data backup is performed, as necessary and as appropriate to the Services described in this PSA.
(e) Customer will assign system administrators and operators available by phone or pager for the duration of this PSA.
(f) Customer will provide LogRhythm adequate onsite access to office space and equipment, and to telephones with outside lines and a dedicated, secure line for internet access.
(g) Should the project plan rely on electronic/network transfer of data, customer will provision and enable any network components or Services required to facilitate the data transfer.
(h) Customer will provide security passes to cover the duration of this PSA to allow LogRhythm access, and the ability to enter and leave Customer facilities, with laptop personal computers and any other materials related to the Services to be performed under this PSA.
(i) If required by LogRhythm, Customer will participate in testing as directed by LogRhythm.
(j) Customer will provide a Project Lead with the requisite qualifications, expertise, and knowledge who is authorized by Customer to act as a liaison between Customer and LogRhythm and assume the responsibilities detailed in Section 2.4.

2.4 Joint Project Management Responsibilities and Tasks. Both the LogRhythm and Customer Project Leads will ensure the following responsibilities and tasks are met as are reasonably applicable to the Services being performed:

(a) Each Project Lead will ensure that an authorized representative of its respective party will approve documents and specifications and accept Services provided in accordance with the acceptance procedures outlined in this PSA.
(b) Coordinate, schedule and monitor all resources and activities related to the Services described in this PSA.
(c) Coordinate and monitor all project change process activities related to the Services described in this PSA.
(d) Act as the focal points for communications between Customer and LogRhythm during the provision of all Services described in this PSA.
(e) Attend LogRhythm and Customer status meetings, as applicable.
(f) Upon becoming aware of a situation which may delay, or threatens to delay, the timely performance of this PSA, promptly initiate the Project Change Process as described in Section 4 of this PSA, to address the potential delay.

3. Status Notification. LogRhythm will notify Customer of the status of Professional Services hours consumed on a regular basis. Additionally, LogRhythm will also notify customer when Deployment Services have been completed in accordance with the agreed upon Statement(s) of Work.

4. Project Change Process. In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, any change to a PSA will be coordinated with the LogRhythm Project Lead.

4.1 Change Initiation. LogRhythm or the Customer may initiate change requests. The reasons for a change may include: customer requests; regulatory changes; changes in technical scope; or other detail program issues or requirements. The Project Lead of the party initiating a change will submit each change request to the other party’s Project Lead, and then both Project Leads will review such request for validation.

Project changes must be submitted in a clear and concise manner in the form of a Change Request Form (Attachment A). Upon the initiation...
of a change request, both parties must agree within twenty-four (24) hours of the receipt of the Change Request Form by the non-initiating party whether or not to continue performance of the Services or to stop all Services being performed until a mutually agreed upon Change Request Form has been signed by both parties.

4.2 Change Request Review. After the submission of a Change Request Form to a Project Lead and validation of the requested change, the LogRhythm Project Lead will review the requested change to determine if it is within the scope of the SOW.

(a) Within Services Scope. If the LogRhythm Project Lead determines that the change requested by Customer is within the scope of the SOW, the Project Leads of both parties will execute the Change Request Form and implement the change into performance of the Services as appropriate.

(b) Outside Services Scope. If the LogRhythm Project Lead determines that the requested change is outside the scope of the Services the SOW, the LogRhythm Project Lead will then determine whether such requested change impacts the pricing or scheduling projections for the performance of the Services.

(i) If the LogRhythm Project Lead determines that the requested change does not impact the pricing or scheduling projections of the SOW, the Project Leads will execute the Change Request Form and implement the requested change into the performance of the Services as appropriate.

(ii) If the LogRhythm Project Lead determines that the requested change does impact the pricing or scheduling projections of the SOW, the terms of Section 4.3 will apply. This process is not intended to handle change requests which would constitute a cardinal change to the SOW. Additionally, LogRhythm reserves the right to reject change requests at its discretion.

4.3 Cost Estimate Preparation. Upon determination that the Change Request impacts the pricing or scheduling of the Services under the SOW, a cost estimate applicable to the performance of the requested change will be prepared by LogRhythm and provided to the Customer. The cost estimate will fully document the scope of the change, and provide a basis of estimate for the proposed adjustments in price, schedule, and/or other factors as applicable. If applicable, a schedule (separate from but integrated with the implementation plan) will be developed and maintained for each such authorized change.

4.4 Change Implementation. The execution of the Change Request Form by both the Multiple Award Schedule 70 Contractor, acting on behalf of LogRhythm and an authorized Government Contracting Officer, in accordance with the terms and conditions of the Multiple Award Schedule 70 contract and the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable, will cause the Change Request Form to become part of and incorporated into the SOW. Commencement of the performance of the requested change is conditioned upon the mutual execution of the Change Request, and LogRhythm’s receipt of an additional P.O. authorization to cover the agreed upon price for each requested change.

5. Fee Description and Payment

5.1 Professional Services Fees. In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, Customer will pay the Professional Service Fees for the performance of the Services under this PSA.

6. Rights to Development. LogRhythm will retain all right, title and interest in and to development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Services, which are based on trade secrets or proprietary information. No license to any patents, trade secrets, trademarks or copyrights is deemed to be granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in the Agreement. Rights associated with any joint development projects with Customer, if any, shall be governed by separate agreements,

7. Constructive changes. LogRhythm and Customer agree that: (a) Customer has knowledge of and control over the conditions and constraints of Customer’s facilities, and IT environment; and administers how the services on Customer’s IT infrastructure are performed; (b) LogRhythm may undertake a course of action under this engagement which was unforeseen at the time the PSA was executed but is necessary, arises from a latent or unusual condition, is at the direction of the Customer, or results from an act of omission of the Customer and, by changing LogRhythm’s manner, method, or scope of work, increases LogRhythm’s cost or schedule to perform; (c) should LogRhythm’s cost or schedule to perform so increase, LogRhythm will have the right to an equitable adjustment to the price, schedule, and/or terms of the PSA for such changes even if these changes have not been submitted through the Project entire agreement between the parties regarding the delivery of Change Process set forth in Section 4. professional services and supercedes all prior or

8. Entire Agreement. This PSA, the Multiple Award contemporaneous agreements, understandings, and Schedule 70 contract and the task/delivery order constitute the communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Lookingglass Cyber Solutions Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341)), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3001 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**LOOKINGGLASS CYBER SOLUTIONS, INC.**

**LOOKINGGLASS CYBER SOLUTIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

1. **DEFINITIONS.** Certain capitalized terms, if not otherwise defined on herein shall have the meanings set forth below in this Section 1.

   1.1. **“Appliance”** shall mean, collectively, the Computer Equipment, the Licensed Software, and any third party software and any patches, updates, improvements, additions and other modifications or revised versions that may be provided by Lookingglass from time to time ordered and paid for by Ordering Activity pursuant to an Order Form.

   1.2. **“Computer Equipment”** means Lookingglass’ network information management hardware equipment, including the various hardware components that comprise such equipment.

   1.3. **“Confidential Information”** means any material or information relating to a Party’s research, development, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases (including any data models, structures, non-customer specific data and aggregated statistical data contained therein) of Lookingglass shall constitute Confidential Information of Lookingglass.

   1.4. **“Customer Content”** means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity that is uploaded, stored, analyzed and made available to and through the Licensed Software.

   1.5. **“Data”** shall mean Lookingglass’ commercially available proprietary analysis and information and third party information regarding the characteristics of certain security threats and vulnerabilities, data and analysis of malicious software and executables that is periodically provided to Lookingglass customers and the Ordering Activity through a Data Service Subscription pursuant to the terms of this Attachment A.

   1.6. **“Data Service Subscription”** shall mean Lookingglass’ service that Lookingglass customers may purchase through an Order Form, whereby the Data is delivered to the Appliance(s) at Ordering Activity’s site for use by Ordering Activity.

   1.7. **“Documentation”** shall mean Lookingglass’ standard user manuals and/or related documentation generally made available to Ordering Activities of the Licensed Software.

   1.8. **“Effective Date”** shall have the meaning set forth in Order Form placed with Contractor.

   1.9. **“Initial Term”** shall have the meaning given such term in Section 8.1.

   1.10. **“Installation Services”** shall have the meaning given such term in Section 6.2.

   1.11. **“Intellectual Property Rights”** shall have the meaning given such term in Section 4.

   1.12. **“Licensed Products”** shall mean, collectively, the Licensed Software, Data and the Documentation.

   1.13. **“Licensed Software”** shall mean, collectively, the executable, object code version(s) of Lookingglass’ proprietary software, procedures, rules or routines, including Upgrades and updates that are furnished or developed under this Attachment A or the Maintenance Services, excluding any third party applications, that is included on an Appliance.

   1.14. **“Maintenance and Support Services”** shall mean the services described in Section 6.1 and Exhibit B.

   1.15. **“Professional Services”** shall have the meaning given such term in Section 6.3.

   1.16. **“Term”** means the period during which the Order Form remains in force and effect with Section 8.1.

   1.17. **“Training Services”** shall have the meaning given such term in Section 6.4.

   1.18. **“Updates”** means a new issuance of any Licensed Software that provides: (i) minor improvements to existing features; and/or (ii) minor additions in functionality compared to the previous issuance; and/or (iii) bug fixes, corrections, patches, or work-arounds. An Update shall be identified by the numeral change to the right of the first decimal point (e.g. a change from version 1.5 to 1.6 or from 1.4.1 to 1.4.2).
1.19. ‘Warranty Period’ shall have the meaning given such term in Section 7.1.

2. PURCHASE OF APPLIANCE.

2.1. Purchase of Appliance. During the Term, Ordering Activity may purchase, and Contractor agrees to sell, the Appliance pursuant to one or more standard Order Forms, provided, however, that Ordering Activity’s rights in, and the use of, any Licensed Software, installed on such Appliance, shall be governed by the license grant and restrictions contained in Section 3.

2.2. Order Forms. During the Term, Ordering Activity may order the Appliance, Data Service Subscription and/or the Maintenance and Support Services by submitting an executed Order Form.

3. SOFTWARE & DATA LICENSE.

3.1. Software License. Subject to the terms and conditions of this Attachment A, Contractor hereby grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable, perpetual license ("Lookingglass License") to use the Licensed Products for Ordering Activity’s internal use. Ordering Activity may use the Licensed Software embedded on an Appliance only with the Appliance for which the Licensed Software is provided and registered for use. Any Licensed Software is provided on separate media. Ordering Activity may (i) only use it in accordance with the terms set forth in this Attachment A and (ii) make a reasonable number of copies solely for internal backup purposes.

3.2. Data License. During the Term and subject to the terms and conditions of this Attachment A, Ordering Activity may purchase a Data Service Subscription from Contractor for use with the Appliance. Upon payment of applicable GSA fees by Ordering Activity, Contractor hereby grants to Ordering Activity a non-transferable, non-sub-licensable, non-exclusive license to download, install and use the Data on the Appliance(s) only for internal Ordering Activity purposes. Ordering Activity may install and use only a single copy of the Data on a single Appliance.

4. OWNERSHIP.

4.1. Appliances and Licensed Products. Ordering Activity acknowledges that Lookingglass and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights ("Intellectual Property Rights") in and to the Appliances and the Licensed Products (including all components thereof), and Lookingglass expressly reserves all rights not expressly granted to Ordering Activity in this Attachment A. Ordering Activity shall not engage in any act or omission that would impair Lookingglass' and/or its licensors’ Intellectual Property Rights in the Licensed Products and any other materials, information, processes or subject matter proprietary to Lookingglass. Raw data shall not be redistributed, republished, or posted for others not a party to this Attachment A to view, use, or otherwise manipulate.

4.2. Customer Content. Contractor through Lookingglass acknowledges that, as between the Ordering Activity and Lookingglass, Ordering Activity owns all Intellectual Property Rights in and to the Customer Content. Ordering Activity agrees that Lookingglass may copy, store, process, analyze and display such Customer Content through the Licensed Software and hereby grants to Lookingglass a non-exclusive, non-transferable right and license to use the Customer Content during the Term for the limited purposes of performing Lookingglass’ obligations under this Attachment A, solely as authorized hereunder, and to collect and use any such data, in non-user specific and aggregated statistical form, for the development and maintenance of its products and services and for Lookingglass’ other business purposes. Ordering Activity hereby represents and warrants that it has sufficient right to grant Lookingglass access to and use of the Customer Content, solely as authorized in accordance with the terms of this Attachment A. Ordering Activity shall be solely responsible for, and assumes the risk of, any problems resulting from the content, accuracy, completeness, consistency integrity, legality, reliability, and appropriateness of all Customer Content. Lookingglass shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Content.

5. GENERAL USAGE RESTRICTIONS.

5.1. Prohibited Uses. Ordering Activity will not use the Appliances or the Licensed Products for any purposes beyond the scope of the licenses granted in this Attachment A. Without limiting the generality of the foregoing, Ordering Activity will not: (i) authorize or permit use of the Licensed Products by persons; (ii) distribute any copies of the Licensed Products; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Ordering Activity’s rights under the licenses granted in Section 3; (iv) modify or create any derivative works of the Licensed Products (or any component thereof), except with the prior written consent of Contractor through Lookingglass; or (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Licensed Products are compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Attachment A shall be construed to grant Ordering Activity any right to obtain or use such source code.

5.2. Proprietary Notices. Ordering Activity shall duplicate all proprietary notices and legends of Lookingglass and its suppliers or licensors upon any and all copies of the Appliances and the Licensed Products made by Ordering Activity. Ordering Activity shall not remove, alter or obscure any Lookingglass proprietary notice or legend.

6. MAINTENANCE AND SUPPORT; OTHER SERVICES.

6.1. Maintenance and Support Terms and Conditions. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ Maintenance and Support Services by paying Contractor the then-applicable annual maintenance and support GSA fee. The terms and conditions that govern the Maintenance and Support Services as provided by Contractor through Lookingglass are attached hereto as Exhibit B. Any Updates provided to Ordering Activity pursuant to the Maintenance and Support Services shall be deemed part of the Licensed Software and shall be licensed under the terms and conditions of the grant of License in Section 3 above.
6.2. Installation Services. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ installation services, either on-site or remotely, for the Appliance (“Installation Services”).

6.3. Professional Services. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ professional services under which support shall be provided to Ordering Activity by Contractor through Lookingglass (“Professional Services”).

6.4. Training Services. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ training services (“Training Services”), under which a representative of Lookingglass shall be present at Ordering Activity’s designated location to provide training services on the operation of the Appliance(s) to the Ordering Activity.

7. WARRANTIES AND LIMITATIONS.

7.1. Limited Lookingglass Warranties. Contractor hereby warrants, for the benefit of Ordering Activity only, that the unmodified Appliances and Licensed Software will conform in all material respects to the specifications within the Documentation for a period of ninety (90) days after the delivery date (“Warranty Period”), provided that such warranty will not apply to failures to conform to the specifications to the extent such failures arise, in whole or in part, from: (i) any use of the Appliances or the Licensed Software other than in accordance with the Documentation; (ii) modification of the Appliances or the Licensed Software by Ordering Activity or any third party; or (iii) any combination of the Appliances and the Licensed Softwares with software, hardware or other technology not provided by Contractor through Lookingglass under this Attachement A. Contractor further warrants that the media on which the Licensed Products are delivered to Ordering Activity will be free of material defects for Warranty Period. During the Warranty Period, Contractor will replace the Appliances, Licensed Software, and media, free of charge to Ordering Activity, provided Ordering Activity promptly notifies Contractor of such defect and returns the Products to Contractor.

7.2. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THAT DATA AND INFORMATION PROVIDED MAY BE UNEVALUATED AND UNVERIFIED, AND SHALL NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THEY MUST USE ITS OWN JUDGMENT IN ASSESSING THE NATURE AND ACCURACY OF THE DATA AND INFORMATION PROVIDED.

7.3. No Other Warranties. EXCEPT AS EXPRESSLY WARRANTED IN SECTION 7.1 OF THIS ATTACHMENT A, THE APPLIANCES AND THE LICENSED PRODUCTS, AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY CONTRACTOR ARE PROVIDED “AS IS” AND “WITH ALL FAULTS,” AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. ORDERING ACTIVITY IS RESPONSIBLE FOR IMPLEMENTING APPROPRIATE PROCEDURES TO MAKE ONSITE BACK-UP COPIES OF ORDERING ACTIVITY’S PROGRAM FILES AND DATA FILES TO MINIMIZE ANY DAMAGE THAT MIGHT ARISE FROM AN ERROR OR DEFECT IN THE APPLIANCES OR THE LICENSED PRODUCTS. NO WARRANTY IS MADE BY CONTRACTOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. CONTRACTOR DOES NOT WARRANT THAT THE APPLIANCES OR THE LICENSED PRODUCTS OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS ATTACHMENT A WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. ORDERING ACTIVITY ACKNOWLEDGES THAT CONTRACTOR’S OBLIGATIONS UNDER THIS ATTACHMENT A ARE FOR THE BENEFIT OF ORDERING ACTIVITY ONLY.

8. MISCELLANEOUS.

8.1. U.S. Government End-Users. Each of the components that constitute the Licensed Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those rights set forth herein.

EXHIBIT B
MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS

1. Definitions.

   a. “Error” means any reproducible failure of the Software to perform any material function set forth in the accompanying documentation.

   b. “New Release” means a new release of the Software issued by Lookingglass provided for the purpose of materially enhancing the functionality or performance of the Software. New Release shall be identified by the numeral to the left of the first decimal point (e.g. a change from version 1.1 to 2.0).

   c. “Maintenance Release” means a bug fix or minor enhancement to the Software, which is identified by the numeral to the right of the first decimal point in the Software (e.g., a change from version 1.1 to 1.2).

   d. “Maintenance and Support Services” means that (a) Contractor through Lookingglass shall provide Ordering Activity with all Maintenance Releases released during the term for which Maintenance and Support Services fees have been paid; (b) Contractor through Lookingglass shall answer questions from Ordering Activity regarding the operation of the Software via telephone and e mail, according to the escalation procedures set forth below; and (c)
Contractor through Lookingglass shall use commercially reasonable efforts to correct any Errors in the Software reported by Ordering Activity and confirmed by Lookingglass in accordance with the priority level assigned to the Error by Lookingglass, as described in the escalation procedures set forth below.

2. **Ordering Activity Obligations.**
   
   a. Ordering Activity shall furnish descriptions and machine readable examples of Errors in the form requested by Lookingglass technical support personnel. Ordering Activity shall also assist Lookingglass’ efforts to duplicate any Errors or problems reported by Ordering Activity.

   b. Contractor through Lookingglass reserves the right to limit the number of individuals who are authorized to make requests for Maintenance and Support Services, and requests Ordering Activity to designate two (2) initial primary contacts. Such technical support contacts must be knowledgeable in the use of the Software and the Ordering Activity’s operating environment. Ordering Activity agrees to notify Lookingglass of any changes in primary support contacts within a reasonable time period.

3. **Help Desk; Escalation Procedures.**
   
   a. Contractor through Lookingglass shall provide the following support: answering of telephone calls placed to the customer support telephone number 888-SCOUT93 (726-8893), and e-mail support at support@lgscout.com. Lookingglass shall use commercially reasonable efforts to provide such support from 9 a.m. to 5 p.m. in each Continental United States Time Zone, excluding Alaska, Monday through Friday excluding U.S. holidays. Errors may be reported any time.

   b. Contractor through Lookingglass shall respond to Errors in accordance with the priority level indicated in the chart below, which priority level shall be determined by Lookingglass.

<table>
<thead>
<tr>
<th>Priority</th>
<th>Definition</th>
<th>Target Response for Initial Requests*</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>Error that renders the Software inoperative or causes the Software to fail catastrophically</td>
<td>Within 4 business hours</td>
<td>Lookingglass shall promptly initiate the following procedures upon confirmation of the Error by Lookingglass: (1) assign a senior technical support manager to correct the Error; (2) notify senior Lookingglass management that a Priority 1 defect has been reported and that steps are being taken to correct the defect; (3) provide Ordering Activity with periodic reports on the status of the resolution; (4) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
<tr>
<td>Priority 2</td>
<td>Error that materially restricts Ordering Activity’s use of the Software</td>
<td>Within 1 business day</td>
<td>Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
<tr>
<td>Priority 3</td>
<td>Error that causes only a minor impact on Ordering Activity’s use of the Software and/or a defect for which a workaround is available.</td>
<td>Within 2 business days</td>
<td>Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
<tr>
<td>Priority 4</td>
<td>A cosmetic or documentation Error that does not impact use of the Software</td>
<td>Within 2 business days</td>
<td>Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
</tbody>
</table>

* Target response time for support requests by e-mail or other on-line facility is within one (1) business day.

   c. The response times set forth in the chart above are target response times only. Lookingglass’ sole obligation is to use commercially reasonable efforts to respond to Errors within such time frames, not to have resolved them.

4. **Exclusions and Limitations.** Lookingglass shall have no obligation to support:
   
   a. Altered, damaged or modified Software;

   b. Software that is not the current release or the most recent previous release;

   c. Errors or other software problems caused by Ordering Activity’s negligence, changes made by any party other than Lookingglass, hardware malfunction, and/or other causes beyond the reasonable control of Lookingglass;

   d. Software installed in an operating or hardware environment not supported by Lookingglass.
5. **Maintenance Releases.** Contractor through Lookingglass' obligations to provide Maintenance Releases shall only require Lookingglass to supply such releases as soon as reasonably possible after such releases become generally available. This Maintenance and Support Services Exhibit shall not be construed to obligate Lookingglass to provide Maintenance Releases to Ordering Activity on any specific timetable.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached McAfee ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

h) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when

the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Contractor Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgatedvia administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

MCAFEE PUBLIC SECTOR, LLC.
BY EXECUTING THIS AGREEMENT IN WRITING, THE ORDERING ACTIVITY AGREES TO THE TERMS OF THIS END USER LICENSE AGREEMENT IF THE ORDERING ACTIVITY IS ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY. ORDERING ACTIVITY REPRESENTS AND WARRANTS THAT ORDERING ACTIVITY HAS FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.

1) IF THE ORDERING ACTIVITY DOES NOT AGREE TO THESE TERMS, THEN DO NOT EXECUTE THIS AGREEMENT. Definitions.

a) “Authorized Partner” means any of McAfee’s distributors, resellers or other business partners that are authorized by McAfee in writing to sell Support or the Software license rights granted under this Agreement.

b) “Cloud Services” means the cloud services that McAfee provides to Customer as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.

c) “Confidential Information” means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.

d) “DATs” means detection definition files, also referred to as signature files, that contain the code(s) antimalware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.

e) “Grant Letter” means a confirmation notice letter issued by McAfee to Ordering Activity, confirming the Software and Support purchased by Ordering Activity, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below).

f) “High Risk Systems” means a device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in the event of a malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High Risk Systems may be required in critical infrastructure, industrial plants, manufacturing facilities, direct life support devices, aircraft, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

g) “McAfee” means (i) McAfee, LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States (except as provided in subclause (vi), below), Canada, Mexico, Central America, South America, or the Caribbean, (ii) McAfee Ireland Limited, with its registered offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Software is purchased in Europe, the Middle East, or Africa, (iii) McAfee (Singapore) Pte. Ltd., with a trading address located 101 Thomson Road 29-02/05 United Square, Singapore, 307591, Singapore, if the Software is purchased in Asia (other than China (if the Software is purchased in RMB) or Japan) or the region commonly referred to as Oceania, (iv) McAfee Co. Ltd., with offices located at Shibuya Mark City West, 12-1, Dogenzaka 1-chome, Shibuya-ku, Tokyo, 150-0043, Japan, if the Software is purchased in Japan, (v) McAfee (Beijing) Security Software Co. Ltd., with a trading address located at Room 616, No. 6 North Workers’ Stadium Road, Chaoyang District, Beijing, China, if the Software is purchased in China (in RMB), or (vi) McAfee Public Sector LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States.

h) “Software” means the McAfee software program in object code format (i) licensed from McAfee and purchased from McAfee or its Authorized Partners, or (ii) embedded in or pre-loaded on McAfee-branded hardware equipment purchased from McAfee or its Authorized Partners, in each case including Upgrades and Updates that Ordering Activity install during the applicable Support period. Software may also include additional features or functionality that can be accessed with either a current subscription or active support contract to certain Cloud Services as required by the specific offering and subject to the Cloud Terms of Service.

i) “Standard” means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP, and ETSI.

j) “Subsidiary” means any entity controlled by Ordering Activity through greater than fifty per cent (50%) ownership of the voting securities.

k) “Support” or “Technical Support” means the support services offered by McAfee for the support and maintenance of the Software and the McAfee-branded hardware equipment as further specified in the McAfee Technical Support and Maintenance Terms.

l) “Updates” are related to content of the Software, including, without limitation, all DATs, signature sets, policy updates, and database updates for the Software, and that are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

m) “Upgrade” means any and all improvements in the Software that are made generally available to McAfee’s customer base as part of purchased Support and which are not separately priced or marketed by McAfee.

2) License Grant; Proprietary Rights.

a) Subject to the terms and conditions of this Agreement, McAfee hereby grants to the Ordering Activity a nonexclusive, nontransferable right to use the Software (for the purpose of this Agreement, to use the Software includes to download, install, and access the Software) listed in the Grant Letter solely for the Ordering Activity’s own internal business operations. The Ordering Activity is not granted rights to Updates and Upgrades unless the Ordering Activity has purchased Support (or a service subscription granting rights to Updates and Upgrades).

b) The Software, including, without limitation, its object code and source code, whether or not provided to the Ordering Activity, is strictly confidential to McAfee, McAfee (or its licensors) owns exclusively and reserves all – and the Ordering Activity may not exercise any – right, title, and interest in and to the Software, including, without limitation, all intellectual property rights in and to the Software, except to the extent of the limited Software use license granted to the Ordering Activity in this Agreement. This Agreement is not an agreement of sale, and no title, intellectual property rights, or ownership rights to the Software are transferred to the Ordering Activity pursuant to this Agreement. You acknowledge and agree that the Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Software, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes, hot-fixes, patches, modifications, enhancements, releases, DATs, signature sets, updates, and policy and database updates and other updates in, or to the Software, and all copies of the foregoing are trade secrets and proprietary property of McAfee, having great commercial value to McAfee. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14 (as applicable), but at a minimum, the Ordering Activity shall receive unlimited rights to
use such derivative works at no further cost. Such rights shall not be construed as granting Ordering Activity any Software or Support (including Updates and Upgrades) at no charge.

c) All Cloud Services, and any Software that includes Cloud Services, are subject to the McAfee Cloud Terms of Service Agreement as an attached document to the GSA Schedule 70 contract.

3) Copy and Use Terms.
   a) Product Entitlement: The use of the Software depends on the licenses purchased (e.g. nodes) and is subject to the Product Entitlement Definitions as an attached document to the GSA Schedule 70 contract on the applicable date of Ordering Activity’s Grant Letter.
   b) Multiple Platforms/Bundles: If the Software supports multiple platforms or if the Ordering Activity receives the Software bundled with other software, the total number of devices on which all versions of the Software is installed may not exceed the Ordering Activity’s product entitlement. Certain Software licensed as part of a suite-based McAfee product may also require the purchase of a separate McAfee server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.
   c) Term: The license is effective for a limited period of time ("Term") in the event that such Term is set forth in the Grant Letter, otherwise the licenses shall be perpetual.
   d) Copies: The Ordering Activity may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
   e) Subsidiaries; Managing Parties: The Ordering Activity may permit a third party with which Ordering Activity enters into a contract to manage Ordering Activity’s information technology resources ("Managing Party"), provided that (i) the Managing Party only uses the Software for Ordering Activity’s internal operations and not for the benefit of another third party or the Managing Party, (ii) the Managing Party agrees to comply with the terms and conditions of this Agreement and (iii) Ordering Activity provides McAfee with written notice that a Managing Party will be using the Software on Ordering Activity’s behalf. The Ordering Activity shall be responsible and fully liable for the Managing Party’s compliance with or breach of the terms of this Agreement.
   f) General Restrictions: The Ordering Activity may not cause or allow any third party to: (i) decompile, disassemble or reverse-engineer the Software; or create or recreate the source code for the Software; (ii) remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies of the Software and Documentation made by the Ordering Activity; (iii) lease Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute, or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise; (iv) modify, adapt, tamper with, translate, or create derivative works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including, without limitation, any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to those of the Software or to compete with McAfee; (v) except with McAfee’s prior written permission, publish any performance or benchmark tests or analysis relating to the Software; or (vii) attempt to do any of the foregoing. The Ordering Activity may not run or operate the Software in a cloud, Internet-based computing, or similar on-demand computing environment unless the Ordering Activity’s Grant Letter specifically provides such.

4) Technical Support and Maintenance.
   a) The McAfee Technical Support and Maintenance Terms and Conditions apply if the Ordering Activity has purchased Support. The McAfee Technical Support and Maintenance Terms and Conditions are incorporated by reference and can be found as an attached document to the GSA Schedule 70 contract. After the support or service subscription period specified in a Grant Letter has expired, the Ordering Activity has no further right to receive any Support including Upgrades, Updates, and telephone support. The Ordering Activity will secure for itself and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or Ordering Activity’s internal policies or guidelines in order to disclose to McAfee, in connection with McAfee’s performance of Support or otherwise under this Agreement, applicable personally identifiable information, data, and material.

5) Limited Warranty and Disclaimer.
   a) Limited Warranty: McAfee warrants that, for a period of sixty (60) days from the purchase date ("Warranty Period"), the Software licensed hereunder will perform substantially in accordance with the Documentation (the “Limited Warranty”).
   b) Exclusive Remedy: In case of any breach of the above Limited Warranty, as Ordering Activity’s exclusive remedy and McAfee’s entire obligation and liability McAfee will (i) repair or replace the Software or (ii) if such repair or replacement would in McAfee’s opinion be commercially unreasonable, upon McAfee’s receipt of Ordering Activity’s written representation and promise that Ordering Activity has removed all instances of the Software and will not use the Software, refund the price paid by Ordering Activity for the applicable Software.
   c) Exclusion of Warranty: THE ABOVE LIMITED WARRANTY WILL NOT APPLY IF: (i) THE SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTATION, (ii) THE SOFTWARE OR ANY PART THEREOF HAS BEEN MODIFIED BY ANY ENTITY OTHER THAN MCAFEE OR (iii) A MALFUNCTION IN THE SOFTWARE HAS BEEN CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT SUPPLIED BY MCAFEE.
   d) Disclaimer: EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED “AS IS” AND MCAFEE MAKES NO REPRESENTATIONS OR WARRANTIES, AND MCAFEE DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WITHOUT LIMITING THE ABOVE, MCAFEE MAKES NO RESPONSIBILITY FOR ANY CLAIMS, SUITS, DEMANDS, AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING, ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE, OR EXPENSES (INCLUDING ATTORNEYS FEES) ARISING FROM OR IN CONNECTION WITH ORDERING ACTIVITY’S USE OF THE
SOFTWARE ON OR IN A HIGH RISK SYSTEM, INCLUDING, WITHOUT LIMITATION, THOSE THAT (I) COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH RISK SYSTEM, (II) ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF THE HIGH RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE SOFTWARE OR THAT THE FAILURE OF THE SOFTWARE CAUSED A HIGH RISK SYSTEM TO FAIL.

6) Limitation of Remedies and Damages.
   a) UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, NEGLIGENCE, CONTRACT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, LOSS OF PROFITS OR REVENUE, DAMAGES DUE TO WORK STOPPAGE AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.
   b) REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT AND/OR ANY OTHER LEGAL THEORY, IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER EXCEED THE AMOUNT OF TOTAL FEES PAID OR PAYABLE BY THE ORDERING ACTIVITY FOR THE SOFTWARE GIVING RISE TO SUCH CLAIM.
   c) No provision of this Agreement shall exclude or limit in any way (i) the liability of either party for death or personal injury caused by negligence or (ii) Ordering Activity’s liability for excess usage of and/or any breach of McAfee’s intellectual property rights in the Software.
   d) THE LIMITATION OF LIABILITY IN THIS SECTION IS BASED ON THE FACT THAT END USERS USE THEIR COMPUTERS FOR DIFFERENT PURPOSES. THEREFORE, ONLY THE ORDERING ACTIVITY CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THE ORDERING ACTIVITY’S NEEDS IN THE EVENT THAT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS, THE ORDERING ACTIVITY AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT THE ORDERING ACTIVITY’S AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THE SOFTWARE WOULD BE HIGHER.
   e) THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733.

7) Intellectual Property Indemnity.
   a) Indemnity: McAfee will indemnify, and, at its election, defend, the Ordering Activity against claims asserted against the Ordering Activity in a suit or action if: (i) the claim is for direct patent infringement or direct copyright infringement, or for McAfee’s trade secret misappropriation and (ii) the claim is (A) asserted against the Software, alone and not in combination with anything or (B) a combination of the Software.
   b) Exclusions: Notwithstanding anything else in this Agreement, McAfee has no obligation to indemnify or defend the Ordering Activity for claims asserted, in whole or in part, against:
      (i) technology or designs that Ordering Activity gave to McAfee;
      (ii) modifications or programming to Software that were made by anyone other than McAfee; or
      (iii) the Software’s alleged implementation of someone or all of a Standard.
   c) Conditions: As a condition of McAfee’s obligations under this Section 7, the Ordering Activity must provide to McAfee: (i) prompt written notice of the claim and Ordering Activity’s agreement to give McAfee control over the defense and settlement of the claim; and (ii) the Ordering Activity’s full and timely good faith cooperation during the course of settlement negotiations and prosecution of the claim, and shall afford McAfee access to all nonprivileged communications and documentation with all parties, witnesses and judicial or administrative bodies associated with such claim upon McAfee’s request. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
   d) McAfee’s Consent: McAfee will not be responsible for any cost, expense, or compromise that the Ordering Activity makes or incurs without McAfee’s prior written consent.
   e) Remedies: McAfee may, at its sole discretion and at its expense: (i) procure for the Ordering Activity the right to continue using the Software; (ii) replace the Software with a non-infringing Software; (iii) modify the Software so that it becomes non-infringing; or (iv) upon the Ordering Activity’s return of the Software to McAfee, and/or removal of the Software from Ordering Activity’s systems, refund the residual value of the purchase price paid by the Ordering Activity for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to the Ordering Activity.
   f) Personal Indemnity: The foregoing indemnity is personal to the Ordering Activity. The Ordering Activity may not transfer or to anyone, including Ordering Activity’s customers.
   g) Exclusive Remedy: The indemnity section states McAfee’s entire obligation and the Ordering Activity’s exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, made in whole or part against the Software.

8) Termination.
   Without prejudice to the Ordering Activity’s payment obligations, the Ordering Activity may terminate the Ordering Activity’s license at any time by uninstalling the Software. Upon such termination, the Ordering Activity shall promptly return or destroy all copies of the Software and Documentation.

9) Additional Terms.
   a) Evaluation Software: If the Software has been identified by McAfee as “Evaluation” Software, then the provisions of this section apply and shall supersede any other conflicting term of this Agreement. The Ordering Activity’s royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to thirty (30) days unless otherwise agreed to in writing by McAfee. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Consequently,
Evaluation Software is provided to the Ordering Activity “AS IS” and McAfee disclaims any warranty or liability obligations to the Ordering Activity of any kind. Support is not available for Evaluation Software. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes and shall not be provided to any third parties. The restrictions described in Section 3(g) apply. If Ordering Activity fails to destroy the Evaluation Software after the Evaluation period has expired, McAfee may address this in accordance with Section 14, Governing Law, of this agreement. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, MCAFEE’S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS UNDER THIS AGREEMENT RELATED TO EVALUATION SOFTWARE, OR IN CONNECTION WITH EVALUATION SOFTWARE, SHALL BE LIMITED TO THE SUM OF FIFTY (50) U.S. DOLLARS OR THE EQUIVALENT IN LOCAL CURRENCY IN TOTAL.

b) Beta Software: If the Software that the Ordering Activity has received has been identified by McAfee as “Beta” Software, then the provisions of Section 9(a) above shall apply accordingly. McAfee has no obligation to the Ordering Activity to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by McAfee, Ordering Activity will provide feedback to McAfee regarding testing and use of the Beta Software, including error or bug reports. Ordering Activity agrees to grant McAfee a perpetual, nonexclusive, royalty-free, worldwide license to use, copy, distribute and make derivative works, and incorporate the feedback into any McAfee product at McAfee’s sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by McAfee of a publicly released commercial version of the Beta Software, the Ordering Activity agrees to return or destroy all earlier Beta Software received from McAfee.

c) Open-Source Software: The Software may include components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model (“FOSS Code”). FOSS Code components included with the Software are redistributed by McAfee under the terms of the applicable FOSS Code license for such component; the Ordering Activity receipt of FOSS Code components from McAfee under this Agreement neither enlarges nor curtails the Ordering Activity’s rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software’s Documentation. The Ordering Activity acknowledges, but does not agree to be bound, by such terms until they have been reviewed and agreed to in writing.


The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

11) Privacy and Collection of Personal or System Information.

a) The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about Ordering Activity and users (e.g., including, without limitation, Ordering Activity’s and users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, McAfee products installed, McAfee components, processes and services information, frequency and details of update of McAfee components, information about third party products installed, extracts of logs created by McAfee, usage patterns of McAfee products and specific features, etc.) (collectively, "Data").

b) The collection of this Data may be necessary to provide the Ordering Activity and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on Ordering Activity’s and users’ computer network), to enable McAfee to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.), and to further or improve overall security for Ordering Activity and users. The Ordering Activity may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

c) By entering into this Agreement, or using the Software, Support or service subscription, the Ordering Activity and users agree to the McAfee Privacy Policy as attached and to the collection, processing, copying, backup, storage, transfer and use of this Data by McAfee and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of Ordering Activity’s or user’s own as part of the Software, Support or service subscription. McAfee will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with the McAfee privacy policy as attached.

12) Audit.

Subject to applicable Government security requirements, upon thirty (30) days’ prior notice McAfee may request, and the Ordering Activity must provide, a Software-facilitated system-generated report (the “System Report”) verifying the Ordering Activity’s Software deployment. The Ordering Activity acknowledges that the System Report is based on technological features of the Software that provide Software deployment verification. If the Software does not contain technological features that provide Software deployment verification, the Ordering Activity will prepare and provide to McAfee within the thirty (30)-day period an accurate Software deployment verification report for the Software. McAfee will only request the System Report (or Ordering Activity’s prepared Software deployment verification report) one time per year and will not unreasonably interfere with the conduct of Ordering Activity’s business.

13) Export Controls.

The Ordering Activity acknowledges that the Software is subject to U.S. and when applicable, European Union export regulations. The Ordering Activity shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. The Ordering Activity shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. The Ordering Activity is responsible, at Ordering Activity’s own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see “Export Compliance” as an attached document to the GSA Schedule 70 contract. If McAfee receives notice that Ordering Activity is or Ordering Activity is identified as a sanctioned or restricted party under applicable law, then McAfee will not be obligated to perform any of its obligations under this license if such performance would result in violation of the sanctions or restrictions.

14) Governing Law.
All disputes arising out of or relating to this Agreement or its subject matter will be governed by the substantive Federal laws of the United States of America. Specifically, any disputes relating to this Agreement shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

15) Confidentiality
Each party hereto acknowledges that by reason of its relationship with the other party hereunder, it may have access to confidential information and materials concerning the other party’s business, technology, and/or products that is confidential to the other party (“Confidential Information”). Each party’s Confidential Information is of substantial value to the party, which value could be impaired if such information was disclosed to third parties or used in violation of this Agreement. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each party agrees that it will not use in any way for its own account or the account of any third party, such Confidential Information, except as authorized under this Agreement, and will protect Confidential Information at least to the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information. Neither party may use the other party’s Confidential Information except to perform its duties or exercise its rights under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving party at the time of access hereunder, (ii) becomes publicly available through no wrongful act of the receiving party, (iii) independently developed by the receiving party without benefit of the disclosing party’s Confidential Information, (iv) has been rightfully received from a third party not under obligation of confidentiality or (v) is required to be disclosed by law, provided the party compelled to disclose the Confidential Information provides the party owning the Confidential Information with prior written notice of disclosure adequate for the owning party to take reasonable action to prevent such disclosure, where reasonably possible. Unless otherwise agreed to by both parties, upon termination of this Agreement or an applicable Addendum, each party will return the other party’s Confidential Information. This Agreement contains no confidential or proprietary information and shall be available to the public, provided however, that other items identified in this Agreement, including but not limited to source code and other technical data, provided to Ordering Activity are Confidential Information and shall not be disclosed.

16) Miscellaneous.
   a) Except for actions for non-payment or breach of McAfee’s proprietary rights in the Software and Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than six (6) years after a party knew or should have known of the claim.
   b) Any term of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.
   c) This Agreement together with the underlying negotiated Purchase Orders, represents the entire agreement between McAfee and the Ordering Activity and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee and duly warranted Contracting Officer. However, this Agreement, including without limitation its termination, has no effect on any signed non-disclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail absent any agreed-upon, different, conflicting, or additional provisions that may appear on any Purchase Order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by McAfee. If any provision of this Agreement is held invalid, unenforceable, invalid, or prohibited under law, then such provision will be deemed restated to reflect the original intention of the parties as nearly as possible in accordance with applicable law and the remainder of this Agreement shall continue in full force and effect.
   d) All notices, requests, demands and determinations for McAfee under this Agreement (other than routine operational communications) shall be sent to: the applicable entity address in Section 1(f) of this Agreement addressed to “Attention: Legal Department”.

MCAFEE TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

McAfee will provide Technical Support services in accordance with the following terms and conditions (“Support Terms”). All capitalized terms not defined herein are defined in the applicable licensing or terms of service agreement.

1. Definitions.
   a. “Authorized Partner” means any of McAfee’s authorized distributors, resellers or other business partners.
   b. “Cloud Client Software” means Software that facilitates Ordering Activity’s access and use of the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, as required by the specific offering. Cloud Client Software is provided as part of a subscription to Cloud Services, and may or may not necessarily be identified in a Grant Letter.
   c. “Cloud Services” means the cloud services that McAfee provides to Ordering Activity as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
   d. “Ordering Activity” means the entity which has purchased Products and to which Intel provides Support.
   e. “Grant Letter” means any written (electronic or otherwise) confirmation notice that Intel issues to Ordering Activity confirming Products and Support purchased by Ordering Activity, including without limitation Ordering Activity’s Support Level entitlement, the Grant Number, the Support Period and download details.
   f. “Grant Number” means a unique number communicated by Intel in a Grant Letter confirming an Ordering Activity’s Support entitlement and is required when accessing Support.
g. “Hardware” means McAfee branded hardware equipment purchased from McAfee or its Authorized Partners, but excludes any Software or other intangible products.

h. “Product(s)” means McAfee’s Software and Hardware product specified in a Grant Letter or Cloud Services and Cloud Client Software purchased from McAfee or an Authorized Partner.

i. “Support”, “Technical Support” or “Technical Support and Maintenance” means the support services for McAfee Products purchased by Ordering Activity either from McAfee or from McAfee’s Authorized Partner which are dependent on the Support Level purchased.

j. “Software” means each McAfee software program in object code format and components licensed by McAfee or its Authorized Partners to Ordering Activity.

k. “Support Period” means the effective time period for which the Ordering Activity has purchased Support that is confirmed in a Grant Letter or in the case of Cloud Services means the effective time period for which the Ordering Activity has purchased the Cloud Services and has an active entitlement and valid account.

l. “Support Region” means any one of the following five (5) regions: (i) North America, (ii) Europe, Middle East and Africa (“EMEA”); (iii) Asia Pacific (“APAC”); (iv) Japan, and (v) Latin America (“LTAM”).

m. “Support Level(s)” means the McAfee Support offering purchased by Ordering Activity and defined at: https://support.mcafee.com/supportoptions.

n. “Upgrade” means any and all improvements in the Cloud Services or Software which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

o. “Updates” means updates to the content of the Cloud Services or Software, and include without limitation all DATs (“DATs” or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, database updates for the Cloud Services or Software which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

2. Provision of Support. McAfee will provide Support to Ordering Activity during the Support Period at the Support Level that has been purchased by Ordering Activity and is confirmed to Ordering Activity in a Grant Letter or in the case of Cloud Services, based on the initial order or renewal. Ordering Activity will not be entitled to receive Support outside of the Support Period.

3. Updates and Upgrades. McAfee grants to Ordering Activity a non-exclusive, non-transferable license to use Updates and Updates provided by McAfee during the Support Period as a part of purchased Support. Such Updates and Updates are subject to the terms of the license granted by McAfee to the Ordering Activity for the Software. With the exception of Cloud Services, (a) Ordering Activity shall promptly download, distribute and install all Updates as released by McAfee during the Support Period and (b) McAfee strongly suggests that Ordering Activity also downloads, distributes and installs all Upgrades as released by McAfee during the Support Period. Ordering Activity acknowledges that any failure to do so could result in Ordering Activity’s inability to receive Updates and Technical Support and therefore could cause major security risks. An Upgrade may require a hardware upgrade or new platform conversion to function properly.

4. Supported Versions and End of Life. The provision of Support is limited to (a) the current version and (b) the immediately preceding version of the Product. Only the current version of Cloud Services will be supported. Notwithstanding any of the foregoing, Support is subject to McAfee’s End-of-Life Policy as an attached document to the GSA Schedule 70 contract. It is Ordering Activity’s responsibility to review McAfee’s Product Support Lifecycle webpage at: http://www.mcafee.com/us/support/support-eol.aspx to determine whether a Product qualifies for Support. Furthermore, Ordering Activity proactive Support notifications can be accessed by subscribing to McAfee Support Notification Service (SNS) available at http://sns.snssecure.mcafee.com.

5. Response Times. McAfee uses commercially reasonable efforts to meet the response times set forth in the escalation and response charts listed under https://support.mcafee.com/charters. Access to McAfee’s websites for the provision of Support may be suspended for brief periods due to scheduled maintenance and other factors.

6. Bug Fixing and Remote Diagnostics. McAfee uses commercially reasonable efforts to provide walk-around solutions or patches to reported problems with Products. With Ordering Activity’s prior authorization, McAfee may perform remote diagnostics to work on reported problems. In the event Ordering Activity declines remote diagnostics, McAfee and Ordering Activity may agree to on-site Technical Support which is subject to an additional fee and reasonable travel and expenses, for which the Ordering Activity is responsible.

7. Support Period and Expired Support. The Support Period either begins (i) at the date the Product was purchased or (ii) at the renewal date of the expiration of a previous Support Period. Reinstating Out-of-Maintenance Support. If an Ordering Activity elects to terminate or allow its support services to lapse or expire, the Ordering Activity will be required to pay for the time that has lapsed since the end of such prior support services and the fees for the entire next annual period in accordance with the GSA Schedule Pricelist. Unless otherwise agreed upon by the parties, Support must be purchased within one (1) year after expiration of the previous Support period.

8. Support Coverage. Support is sold based upon the quantity of all Products purchased by Ordering Activity. Upon purchasing Support for a Product, Ordering Activity must purchase the same Support Level for all Product units owned, used or licensed by Ordering Activity that are deployed or in use at the location(s) covered by Support. Some Support Level(s) are available for purchase by Ordering Activity per Support Region.

9. Acquired Company Products. From time to time McAfee may acquire other companies and continue to support the products licensed or cloud services offered by such companies (“Acquired Products”). The Support Level(s) defined herein may not be applicable to the Acquired Products at the time of the acquisition but McAfee may within a reasonable period of time after the acquisition provide a description of the Support Level(s) available for the Acquired Products, which will become applicable once published on the Support webpage.
10. **Exclusions.** McAfee has no obligations to, (a) provide Support where hardware, tools or software other than those supplied or approved by McAfee have been incorporated with the Product (b) provide Support for Hardware damaged by or Hardware failures caused by Ordering Activity (c) import or export Ordering Activity data, create or modify custom business rules or reports, or support custom modifications to databases, active server pages, or other code, components or programs (d) provide Support for problems that cannot be reproduced in running the Product in a configuration meeting published McAfee specifications or (e) provide Cloud Services Support for issues arising from any violation of the Cloud Services Agreement.

11. **Obligations of Ordering Activity.**

a. **Support Process:** Ordering Activity must report Product problems to McAfee Support organization, and be prepared to provide McAfee with (i) the Grant Number, (ii) the location of the Product, (iii) a detailed description of the problem, (iv) a description of the hardware on which the Software is loaded, including any serial number or service tag number where applicable, (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes, (vi) technical contact information and (vii) a detailed description of the problem. McAfee may request that Ordering Activity takes certain actions to determine whether the problem or error is related to the Product, or other item. Ordering Activity must reasonably cooperate with McAfee during this process.

b. **Access:** Ordering Activity shall provide McAfee with sufficient, free and safe access to the Products, Ordering Activity's computer systems networks and facilities in the event that it is agreed that McAfee will provide on-site support at Ordering Activity's location or facilities of the Product. McAfee will perform remote diagnostics. McAfee will conform to Ordering Activity's security requirements before gaining access to Ordering Activity's facilities, provided such requirements are issued in writing to McAfee reasonably prior to accessing such facilities.

c. **Backup and Restore:** Ordering Activity must keep adequate backup copies of data, databases, and application programs and agrees that Ordering Activity is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs.

12. **Termination.** Any terms which by their nature extend beyond the termination of this agreement remain in effect until fulfilled.

13. **Hardware specific terms.**

a. **Region and Geographic Limitations:** Unless otherwise agreed in writing by McAfee or included as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where Ordering Activity originally installed the Hardware. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under https://support.mcafee.com/hardwarerelocationmatrix (provided for informational purposes only).

b. **Hardware Return:** Prior to returning any Hardware to McAfee for repair or replacement, Ordering Activity must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Ordering Activity proprietary or confidential information that prevent McAfee from exchanging, repairing or replacing the Hardware, (ii) Ordering Activity has obtained a return authorization from McAfee, including a return material authorization number (a "RMA Number"), Hardware returned to McAfee becomes the property of McAfee at the time it is received by McAfee and Ordering Activity shall assume ownership of all replacement Hardware provided by McAfee to Ordering Activity upon shipment by McAfee.

c. **Restrictions:** Ordering Activity must not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware without written authorization from McAfee. Ordering Activity must not install, nor permit the installation of additional hardware or software on the Hardware without written authorization from McAfee or breach any tamper seal on the Hardware.

d. **Inspection Period:** McAfee reserves the right to inspect Hardware for which Support has lapsed for more than ninety (90) days by itself or by its agents in consideration of a separate fee set forth in the Purchase Order and Requests to Ordering Activity to install the most current Upgrades and Updates before McAfee agrees to renew Support for the Hardware.

14. **Resident Support Account Manager and Resident Product Specialist Terms.**

a. If Ordering Activity purchases a Resident Support Account Manager ("RSAM") or Resident Product Specialist ("RPS"), McAfee will provide an RSAM or RPS to provide on-site certain Support that Ordering Activity has purchased from McAfee. Additional information on the description and scope of the RSAM's and RPS's roles and responsibilities can be found at http://support.mcafee.com/documentation.

b. The RSAM or RPS will work during normal business hours as agreed upon between McAfee and Ordering Activity. The RSAM or RPS may be required to be out-of-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-office, or should the RSAM's or RPS's employment with McAfee end, McAfee will provide to Ordering Activity the name and phone number of a temporary Support Account Manager ("SAM") that will cover Ordering Activity's account until the RSAM or RPS returns. The temporary SAM will provide Support services remotely.

c. **Ordering Activity acknowledges and understands that the timeline to on-board at Ordering Activity's location is approximately ninety (90) days from the time of the notification of the request. During this period, McAfee will assign an interim SAM to facilitate the Support services until the parties can agree upon the individual to be placed as an RSAM or RPS. McAfee and Ordering Activity will work together in good faith to select the RSAM or RPS. In the event the Ordering Activity rejects the candidate or delays in the selection of a reasonable candidate McAfee has offered for consideration, McAfee will assign an interim SAM. For avoidance of doubt, the interim SAM will not be an on-site resource and may be a shared resource with other McAfee customers.

d. Ordering Activity acknowledges that McAfee employees are quickly deployed, and any delay in the selection of a candidate may: (1) result in Ordering Activity not being able to have its desired individual perform the Support services; (2) result in the use of an interim SAM (as stated above); and (3) hinder the performance of the Support services as described herein. Ordering Activity also acknowledges that it might not be possible to retain a particular individual for the duration of the term of the Support Period. The use of an interim SAM is, on its own, not sufficient to warrant a refund of fees or entitle Ordering Activity to service credits.

15. **Malware Awareness Program Terms.**
a. If, for the Support Period, Ordering Activity has purchased (1) Support for McAfee’s ePolicy Orchestrator Product (“ePO”), and (2) either (a) an RSAM, (b) an RPS, or (c) a Malware Awareness Program (“MAP”), as part of Support (as defined hereunder) McAfee will produce for Ordering Activity, once during the Support Period at a time agreed by Ordering Activity and McAfee, a MAP report in McAfee’s then-current standard form using data collected by McAfee through Ordering Activity’s deployment of ePO.

b. McAfee may change the standard form of the MAP report at McAfee’s discretion to reflect developments in malware and other security threats, information captured by ePO, or for other reasons identified by McAfee.

c. For the avoidance of doubt, (1) a license to ePO must be purchased separately by Ordering Activity in order for Ordering Activity to purchase Support for ePO, (2) a license to ePO is not included with Support, with the MAP report, or in connection with the MAP, but must be purchased separately by Ordering Activity, and (3) MAP is not included as part of Support unless Ordering Activity has separately purchased Support for ePO and has separately purchased an RSAM, an RPS, or MAP.

d. The MAP report and its contents, excluding Ordering Activity’s Confidential Information, are strictly confidential to McAfee, and, except to the extent expressed in the next sentence, McAfee owns and reserves all right, title, and interest therein and thereto. Upon delivery of the MAP report to Ordering Activity, McAfee grants to Ordering Activity a worldwide, royalty-free, perpetual, non-exclusive license under McAfee’s McAfee intellectual property rights to use and make a reasonable number of copies of the MAP report, in the form originally furnished by McAfee to Ordering Activity, for Ordering Activity’s own internal business purposes.

e. THE MAP AND MAP REPORTS ARE PROVIDED TO ORDERING ACTIVITY FOR ORDERING ACTIVITY’S INFORMATIONAL PURPOSES ONLY AND ON AN “AS IS” BASIS. MCAFEE DOES NOT REPRESENT OR WARRANT THAT MAP OR ANY MAP REPORT WILL IDENTIFY ALL MALWARE OR VULNERABILITIES. ANY OBSERVATIONS OR RECOMMENDATIONS GIVEN AS A PART OF MAP OR A MAP REPORT ARE GENERAL AND ARE NOT INTENDED AS SPECIFIC RECOMMENDATIONS OR COURSES OF ACTION. ORDERING ACTIVITY’S RELIANCE ON, ACTION ON OF, OR LACK OF ACTION ON ANY SUCH OBSERVATIONS OR RECOMMENDATIONS IS AT ITS SOLE RISK.

16. Warranty. MCAFEE WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, ORDERING ACTIVITY’S SOLE AND EXCLUSIVE REMEDY, AND MCAFEE’S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SUPPORT. MCAFEE SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF ORDERING ACTIVITY PROVIDES WRITTEN NOTICE OF THE BREACH TO MCAFEE WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT. THIS WARRANTY IS ORDERING ACTIVITY’S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, A GAP FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OR CONFORMITY TO ANY REPRESENTATION, SKILL AND CARE. MCAFEE DOES NOT WARRANT OR GUARANTEE THAT SUPPORT WILL BE FREE FROM ERRORS OR DEFECTS OR THAT THE SUPPORT WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to you. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW (IF ANY).

17. Limitation of Liability; Confidentiality; Audit; Export Control. Ordering Activity agrees to these Technical Support and Maintenance Terms and Conditions as part of one or more product licenses or services agreements between McAfee and the Ordering Activity (“Underlying Agreement”). THE LIMITATION OF LIABILITY, CONFIDENTIALITY, PRIVACY, AUDIT AND EXPORT CONTROL PROVISIONS OF THE RELEVANT UNDERLYING AGREEMENT ARE INCORPORATED INTO THESE TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS.

18. General.

a. Recording: In providing Support, McAfee may record all or part of telephone calls between Ordering Activity and McAfee for quality assurance and training purposes in compliance with applicable laws.

b. Assignment: The provision of Support is not assignable by Ordering Activity without the prior written consent of McAfee. Any attempt of assignment by Ordering Activity without such consent will be void. McAfee may subcontract its obligations to provide Support hereunder to another party, but with notice to the Ordering Activity.

c. Governing law: All disputes arising out of or relating to this Agreement or its subject matter will be governed by the Federal laws of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

19. Entire Agreement. The Support Terms and any additional terms referenced herein together with the underlying negotiated Purchase Order(s), constitute the entire agreement between Ordering Activity and McAfee with regard to Support, and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee and duly warranted Contracting Officer. However, this Agreement, including without limitation its termination, has no effect on any signed non-disclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail absent any agreed-upon, different, conflicting, or additional provisions that may appear on any purchase order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement.

McAfee Cloud Services Agreement
McAfee, LLC. (“McAfee”) and Customer (as identified in the Grant Letter) agree to the following McAfee Cloud Services Agreement (“Subscription Agreement”), the Supplemental Terms and Conditions set forth below or otherwise included with the pertinent Cloud Services or Software (“Supplemental Terms”) and the terms as specified in the Grant Letter. If Customer does not agree to the terms in the Grant Letter, Customer should not execute this Subscription Agreement or the accompanying Purchase Order, and Customer must immediately notify McAfee to cancel the Cloud Services identified in the Grant Letter prior to accessing or using the Cloud Services or Software.

BY EXECUTING THIS SUBSCRIPTION AGREEMENT OR THE ACCOMPANYING GOVERNMENT PURCHASE ORDER IN WRITING, YOU AGREE TO THE TERMS OF THIS AGREEMENT (INCLUDING THE APPLICABLE SUPPLEMENTAL TERMS AND GRANT LETTER) ON BEHALF OF CUSTOMER, AND YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT.

1. DEFINITIONS. For purposes of the Agreement, the following definitions apply:

a. “Agreement” means this Subscription Agreement, the applicable Supplemental Terms, the Grant Letter.

b. “Annual Customers” means Customers who have a valid annual or multi-year contract for Cloud Services.

c. “Channel Partner” means the McAfee partner identified in the Grant Letter through which the Customer purchased the Cloud Services.

d. “Cloud Client Software” means Software that facilitates Customer’s access and use of the Cloud Services, and that does not perform functionality without active support or access to the Cloud Services, as required by the specific offering. Cloud Client Software is provided as part of a subscription to Cloud Services, and may or may not necessarily be identified in a Grant Letter.

e. “Cloud Services” means the cloud services that McAfee provides to Customer as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.

f. “Control” means the possession of beneficial ownership of more than fifty percent (50%) of the voting power of the person or entity entitled to vote in the election of directors or, in the case of an entity that is not a corporation, the election of the corresponding managing authority.

g. “Customer Data” means any data provided by Customer to McAfee by and through the Software, Cloud Services, Support and any other products or services offered under this Agreement. Customer Data includes Personal Data as defined in Section 9 (Privacy).

h. “Documentation” means explanatory materials created by McAfee in printed, electronic or online form that accompany the Cloud Services or Software.

i. “Grant Letter” means any written (electronic or otherwise) confirmation notice that McAfee issues to Customer confirming the Licensed Product and Support purchased, License Period, and other access and use details. A Grant Letter includes a Welcome Letter or other purchasing documentation entered into between Customer and McAfee or Channel Partner for the Licensed Product.

j. “McAfee” means (i) McAfee, LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States (except as provided in subclause (vi), below), Canada, Mexico, Central America, South America, or the Caribbean, (ii) McAfee Ireland Limited, with its registered offices located at Pipers Way, Swindon, Wiltshire SN3 1NJ, United Kingdom, if the Software is purchased in Europe, the Middle East, or Africa, (iii) McAfee (Singapore) Pte Ltd., with a trading address located at 69/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong, if the Software is purchased in Asia (other than China (if the Software is purchased in RMB) or Japan) or the region commonly referred to as Oceania, (iv) McAfee Co. Ltd., with offices located at Kokusai Building 5F, 1-1, Marunouchi 3-chome, Chiyoda-ku, Tokyo, 100-0005, Japan, if the Software is purchased in Japan, (v) McAfee (Beijing) Security Software Co. Ltd., with a trading address located at Room IIAB, First Floor, No. 999 Ying Lun Road, Waigaqiao Free Trade Zone, Pudong, Shanghai, 200131 China, if the Software is purchased in China (in RMB), or (vi) McAfee Public Sector LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States.

k. “Intelectual Property Rights” means all intellectual property rights and industrial property rights (throughout the universe, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected, including, without limitation, patent rights, copyrights, trade secret rights, and trademark rights.

l. “License Period” means, with respect to Cloud Services or Software, the time period for which Customer has purchased the right to receive the Cloud Services or Software, or, with respect to Cloud Client Software, the time period for which Customer has purchased the right to receive Cloud Services that are accessed through the Cloud Client Software. The initial License Period is as specified in a Grant Letter.

m. “Licensed Product” means all Cloud Services, Software or Documentation to which Customer has rightful access through a valid Grant Letter.

n. “Malware” means applications, executable code, or malicious content that McAfee deems to be harmful.

o. “Monthly Customer” means Customers who have a valid monthly contract for Cloud Services with no annual or multi-year commitment.

p. “Node” means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homeworker/teleworker home-based systems, file and print servers, e-mail servers, Internet gateway devices, storage area network servers (SANS), terminal servers and portable workstations connected or connecting to the server(s) or network. For Cloud Services, Node may also mean an instance of the specific Cloud Service or the number of Users or seats with access to the Cloud Services.

q. “Open Proxy” means an HTTP server that allows third-party relay or proxy of web traffic.

r. “Open Relay” means an SMTP Email server that allows third-party relay of Email messages.
S. “Software” means each McAfee software program in object-code format that is licensed from McAfee under this Agreement, including Updates and Upgrades, or any object-code delivered to Customer.

t. “Standard” means any generally recognized technology or technical standard promulgated, distributed, specified, or published by an entity whose activities include developing, coordinating, promulgating, amending, reissuing, or otherwise producing standardized technology specifications or protocols for adoption by product manufacturers or the public. “Standards” include “de facto” technology or technical standards that are initially introduced by one or more entities, which then become more widely adopted by others in other products; includes features characterized as “mandatory,” “optional,” and their equivalents; and includes versions characterized as “draft.”

U. “Subsidiary” refers to any entity Controlled by Customer, but only for so long as that Control exists.

V. “Support” means technical support provided as described in the then-current McAfee Technical Support and Maintenance Terms, which are attached hereto.

w. “Throughput” means the amount of data or files sent from the Customer through the Cloud Services.

x. “Updates” means updates to the content of the Cloud Services or Software, and include without limitation all DATs (“DATs” or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, and database updates for the Cloud Services or Software, which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

y. “Upgrades” means any and all improvements in the Cloud Services or Software which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

z. “User” means a unique individual whom Customer has authorized to use the Cloud Services or Software pursuant to Customer’s license under this Agreement.

2. RIGHT OF USE AND RESTRICTIONS.

a. Right to Access and Use Cloud Services. Subject to the terms of this Agreement, McAfee grants Customer a nonexclusive, nontransferable, worldwide right to access and use the Cloud Services described in the Grant Letter, for up to the number of Nodes, Throughput or other metering mechanism specified in the Grant Letter, solely for Customer’s internal business use during the License Period. Unless otherwise specified by McAfee, Cloud Services that are designed to be accessed through Software as provided by McAfee may be accessed only through such Software.

b. License to Install and use Cloud Client Software. Subject to the terms of this Agreement, McAfee grants Customer a nonexclusive, nontransferable, worldwide license to install and use the Cloud Client Software made available by McAfee to Customer in connection with the Cloud Services, for up to the number of copies specified in the Grant Letter, on equipment owned or operated by or on behalf of Customer, as needed to access and use the Cloud Services described in the Grant Letter, solely for Customer’s internal business use during the License Period. The Cloud Client Software is licensed, not sold, to Customer under the terms of this license. Customer may make a reasonable number of copies of the Cloud Client Software for back-up, archival, and disaster recovery purposes during the License Period. The Cloud Client Software must be de-installed and destroyed at the end of the License Period. If Customer enters into a contract in which a third party manages Customer’s information technology resources (“Managing Party”), Customer may enable such Managing Party to use the Cloud Client Software on Customer’s behalf, provided that (a) the Managing Party only uses the Cloud Client Software and Cloud Services for Customer’s internal operations; (b) the Managing Party agrees to be bound by the terms of this Agreement, (c) Customer provides McAfee with written notice that a Managing Party will be using the Cloud Client Software on Customer’s behalf, and (d) Customer remains responsible for all use of the Cloud Client Software and Cloud Services by the Managing Party.

c. Updates and Upgrades. Customer must have an active subscription to the Cloud Services, or have an active Support Agreement for the Cloud Services, as applicable, to receive Updates or Upgrades for the Cloud Services, Cloud Client Software, and any On-Premise Software.

d. User Licenses. User licenses cannot be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Software or Cloud Services.

e. Subsidiaries. Customer may permit its Subsidiaries to use the Software and Cloud Services in accordance with the terms of this Agreement but only while the entity qualifies as Customer’s Subsidiary, and provided that (i) each Subsidiary agrees to be bound by the terms of this Agreement, and (ii) Customer is responsible for each Subsidiary’s compliance with this Agreement.

f. Restrictions. Customer may not access or use the Software or Cloud Services if Customer is a direct competitor of McAfee, or for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without McAfee’s express written permission. Customer will not: (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Software or Cloud Services available to any third party; (ii) use systems as an Open Proxy or Open Relay; (iii) modify, decompile, reverse engineer, or copy the Software or Cloud Services, or any of its components; (iv) use the Software or Cloud Services to conduct fraudulent activities; (v) attempt to gain unauthorized access to the Software or Cloud Services, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to McAfee, its provision of the Software or Cloud Services, or others; (vi) impersonate or misrepresent an affiliation with a person or entity; (vii) use the Software or Cloud Services to initiate or propagate Malware; (viii) use the Software or Cloud Services for any purpose that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement; (each of (i) to (viii), a “Prohibited Use”).

g. Reserved Rights. The Cloud Services and Software, including, without limitation, their object code and source code, whether or not provided to Customer, are strictly confidential to McAfee. McAfee (or its licensors) owns exclusively and reserves all rights to the Cloud Services and Software, and Customer may not exercise any, right, title, and interest in and to the Cloud Services or Software, including, without limitation, all Intellectual Property Rights in and to the Cloud Services or Software, except to the extent of the limited rights and licenses granted to Customer in this Agreement. This Agreement is not an agreement of sale, and no title,
Intellectual Property Rights, or ownership rights to the Cloud Services or Software are transferred to Customer pursuant to this Agreement. Customer acknowledges and agrees that the Cloud Services and Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Cloud Services and Software, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes, hot-fixes, patches, modifications, enhancements, releases, DATs, signature sets, upgrades, and policy, database, and other updates in, of, or to the Cloud Services or Software, all derivative works based upon any of the foregoing, and all copies of the foregoing are trade secrets and reserved to and proprietary property of McAfee.

h. Right to Use Customer Data. Customer hereby grants McAfee a limited, non-exclusive, royalty-free, license to access and use the Customer Data as necessary for (i) McAfee to provide the Software, Cloud Services and technical support to Customer during the applicable License Period; (ii) to maintain or improve the Cloud Services and Software and other security related products, including to develop Updates and Upgrades; (iii) for internal research for threat protection solutions, such as improved spam protection (unless Customer opts out of such uses through the options available in the console); (iv) for administration of the Agreement, and (v) for purposes set forth in McAfee’s Privacy policies available at http://www.mcafee.com/common/privacy/english/. In addition, Customer acknowledges and agrees to the use or sharing by McAfee of aggregated, anonymized or pseudonymized Customer Data (such that it no longer identifies Customer or any individual) as part of a larger set of statistics (for example, statistics describing the enterprise, amount of traffic, success rates, and the like) and that such data does not constitute Confidential Information.

i. Open Source Software. Customer acknowledges that the Software may include components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model (“FOSS Code”). FOSS Code components included with the Software are redistributed by McAfee to Customer under the terms of the applicable FOSS Code license for such component, and Customer’s receipt of FOSS Code components from McAfee under this Agreement neither enlarges nor curtails Customer’s rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with the Software or its Documentation.

3. BETA RELEASES AND EVALUATIONS. If Customer has signed up for an evaluation of Software or Cloud Services (“Evaluation Product”), or is given access to Software or Cloud Services identified as not generally available for commercial use, such as “Beta” or “Pre-Release” (“Beta Product”), then the provisions of this Section shall apply and shall control over any other conflicting terms of this Agreement. Customer’s use of an Evaluation Product is limited to thirty (30) days unless otherwise agreed to in writing by McAfee, during which time Customer may access and use the Evaluation Product solely for Customer’s internal evaluation to decide whether to purchase the right to use the Evaluation Product. McAfee reserves the right to materially change or discontinue Beta Products at any time and without notice to Customer. Access or use of a Beta Product is restricted to Customer’s internal performance evaluation of the Beta Product. McAfee is not obligated to finally release any version of the Beta Product. Customer will report to McAfee unusual, unplanned, or out of the ordinary events observed in a Beta Product. McAfee has no obligation to provide any Support for Evaluation Products or Beta Products. Customer acknowledges that the Evaluation Products and Beta Products may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss. CONSEQUENTLY, EVALUATION PRODUCTS AND BETA PRODUCTS ARE PROVIDED TO CUSTOMER SOLELY ON AN “AS IS” BASIS, AND MCAFEE DISCLAIMS ALL WARRANTIES AND LIABILITY IN CONNECTION WITH THE EVALUATION PRODUCTS AND BETA PRODUCTS. CUSTOMER ASSUMES ALL RISK OF USE OF EVALUATION PRODUCTS AND BETA PRODUCTS. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE AGGREGATE LIABILITY OF MCAFEE AND LICENSORS SHALL BE LIMITED TO THE SUM OF FIFTY (50) UNITED STATES DOLLARS (OR THE THEN-CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.

4. CUSTOMER OBLIGATIONS

a. Customer is responsible for all activity occurring under Customer’s Software, Cloud Services and Support accounts. Customer will provide McAfee with all information and assistance required to supply the Software or Cloud Services or enable Customer’s use of the same. Customer will immediately notify McAfee of any: (i) unauthorized account use or other suspected security breach; (ii) unauthorized use, copying or distribution of Software, Documentation or Customer Data; and (iii) unusual performance of the Software or Cloud Services observed by Customer.

b. Customer must obtain all necessary rights and permissions from Users. Customer represents and warrants that: (i) Customer has the legal rights and applicable consents to provide Customer Data to McAfee, (ii) Customer will comply with all applicable laws for processing and transferring Customer Data to McAfee and (iii) Customer retains adequate back-ups of Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Cloud Services rely on Customer Data as supplied by Customer, and McAfee is not liable for the content of Customer Data. McAfee does not assume any duty or obligation to correct or modify Customer Data.

c. As needed, Customer will provide McAfee contact information for Customer’s system administrator, who is authorized to provide the information required to configure and manage the Cloud Services (“System Administrator”). Depending on the Cloud Services purchased, McAfee may provide Customer with a confidential access code to the administration tool, which may only be accessed by the System Administrator.

d. Customer agrees to provide current and complete account Users’ information as necessary for McAfee to manage Customer’s account. Customer agrees to accept McAfee emails relevant to Customer’s receipt of the Cloud Services at the e-mail address specified by its System Administrator.

e. Customer agrees that McAfee may rely on all information provided to McAfee by the Customer. McAfee may provide all notices, statements, and other communications arising under this Agreement (other than legal notices) to Customer through either e-mail, posting on the Cloud Services or other electronic transmission.

5. TECHNICAL SUPPORT SERVICE. The McAfee Technical Support and Maintenance Terms apply to the Software and Cloud Services. The McAfee Technical Support and Maintenance Term are attached hereto below.

6. TERM; TERMINATION; LICENSE PERIODS.

GS-35F-0511T
a. Term. The term of this Agreement will continue until the termination of all License Periods, unless terminated sooner in accordance with this Agreement.

b. Termination.

1. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, McAfee shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

2. Pursuant to FAR 52.233-1, upon termination of this Agreement, all License Periods will terminate. After the termination of the License Period for a particular Service, Customer agrees that McAfee has no obligation to retain Customer Data for that Service, which may be irretrievably deleted as part of McAfee’s record and information management and in accordance with applicable laws. To the extent any Customer Data is stored by the Service, Customer is solely responsible for retrieving that Customer Data.

c. License Periods. The initial License Period for each of the Cloud Services (including any Cloud Client Software used to access the Cloud Services) or for any other Software is specified in the Grant Letter (the "Initial License Period").

d. End of Life. McAfee's provision of the Cloud Services and Software is subject to McAfee’s End-of-Life Policy attached hereto. Upon the End of Life date of the Cloud Services (as described in the End-of-Life Policy), the License Period for the Cloud Services (including Cloud Client Software used to access the Cloud Services) will terminate.

e. Suspension of Service. McAfee may suspend the Cloud Services: (a) if McAfee deems it necessary to prevent or terminate any actual or suspected Prohibited Use; or (b) upon notice to Customer if: (i) Customer commits a material breach of this Agreement; (ii) McAfee receives notice from Channel Partner that Customer is in material breach of the Agreement; (iii) McAfee determines that the volume of data being transmitted or processed through the Cloud Services under Customer’s account is significantly greater than the average use or may cause degradation of the Cloud Services for Customer or other customers; or (iv) in the event of a threat to the security and integrity of the hosted environment and/or Customer Data. McAfee may temporarily suspend the Cloud Services if McAfee determines that the volume of data transmitted or processed through the Cloud Services under Customer’s account causes a degradation of the services. Temporary suspension of Cloud Services shall be without prejudice to any rights or liabilities accruing prior to or during the suspension, including Customer’s obligation to pay fees.

f. Survival. Sections 1, 6-11, 13-18 and 20-29 will survive the termination (including by expiration) of this Agreement.

7. PAYMENTS; TAXES; AUDIT.

a. Payments. Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case payment obligations shall flow exclusively between Channel Partner and Customer, Customer will pay McAfee the fees set forth in the Grant Letter within thirty (30) days of the invoice date.

b. Transaction Taxes. Customer will pay all applicable transaction taxes, including, but not limited to, sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Customer under this Agreement ("Transaction Taxes"). Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case obligations regarding Transaction Taxes shall be exclusively the responsibility of Channel Partner and Customer, McAfee will separately state on its invoices the Transaction Taxes that McAfee is required to collect from Customer under applicable law. Customer will provide proof of any exemption from Transaction Taxes to McAfee at least 15 business days prior to the due date for paying an invoice. If McAfee does not collect the required Transaction Taxes from Customer but is later required to remit such Transaction Taxes to any taxing authority, Customer will promptly reimburse McAfee for such Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of McAfee. McAfee shall state separately on invoices taxes excluded from the fees, and Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-3.

c. Withholding Taxes. All payments due from Customer will be made free and clear without deduction for any present and future taxes imposed by any taxing authority. Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case obligations regarding Withholding Taxes (as defined below) shall be exclusively the responsibility of Channel Partner and Customer, if Customer is required by applicable law to deduct or withhold income taxes from amounts payable to McAfee under this Agreement ("Withholding Taxes"), Customer will remit, and provide McAfee with evidence that Customer has remitted, the Withholding Taxes to the appropriate taxing authority and pay to McAfee the remaining net amount. Customer will provide written notice to McAfee of its intent to withhold (including details of the amounts and legal basis for the Withholding Taxes) at least 15 business days prior to the due date for any payments under this Agreement and will cooperate with McAfee to reduce any Withholding Taxes. If McAfee provides Customer with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Customer will apply the lower rate.

d. Income Taxes. Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

e. Audit. McAfee has the right, at its expense, to audit Customer’s compliance with the terms of this Agreement, and Customer will provide all records and information reasonably necessary for McAfee to successfully perform such audit. Such audit shall be conducted in a manner consistent with Government security requirements. If any audit reveals that Customer owes fees to McAfee, or the Channel Partner, McAfee or Channel Partner shall invoice Customer for such underpaid amounts. Customer consents to McAfee’s disclosure of such audit results to the Channel Partner.

8. CONFIDENTIALITY. In connection with this Agreement, each party may receive or have access to confidential information and materials of the other party. As used in this Agreement, “Confidential Information” means information that is designated as “confidential” or by similar words by the disclosing party at the time of disclosure and, if oral or visual, is confirmed as confidential by the disclosing party in writing within 15-days of disclosure; or (b) the receiving party should reasonably have considered to be confidential under the circumstances surrounding disclosure; but Confidential Information does not include any information that (i) was previously known to the receiving party, (ii) is received from a third party without similar restriction, (iii) is or becomes publicly available other than through unauthorized disclosure,
(iv) is independently developed by the receiving party without the use of the other party’s Confidential Information. Customer acknowledges that McAfee’s Cloud Services access codes and nonpublic information regarding the Licensed Products and McAfee’s Intellectual Property Rights are McAfee’s Confidential Information. As between the parties, the disclosing party owns the Confidential Information it discloses to the receiving party. Each party will take reasonable precautions (at least as great as the precautions it takes to protect its own confidential information) to prevent unauthorized use or disclosure of the other party’s Confidential Information in its possession. Neither party will (a) disclose any Confidential Information of the other party to any third party during the term of this Agreement and for as long thereafter as the Confidential Information remains competitively sensitive, but not in any event for less than 7 years following the termination of this Agreement, or (b) use any Confidential Information of the other party except in the performance of its obligations or exercise of its rights under this Agreement; but a party may disclose Confidential Information of the other party (i) to its employees, contractors or agents, on a need-to-know basis, under an obligation of confidentiality no less stringent than that set forth in this Section, and (ii) as required by law, provided that the receiving party notifies the disclosing party as soon as feasible and cooperates with the disclosing party’s efforts to limit or avoid the disclosure. McAfee recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

9. DATA PROTECTION. The Software, Cloud Services or Support may employ applications and tools to collect Customer Data that includes one or more data elements that can be used to identify a natural person (“Personal Data”). For the purpose of the Agreement, with respect to Personal Data, Customer and McAfee acknowledge that McAfee is a Data Processor and Customer is a Data Controller.
   a. In accordance with the instructions provided by Customer through one or more orders under this Agreement, McAfee will collect, process, copy, backup, store, transfer and use (collectively “Process”) Personal Data. Processing may take place in, from and to the United States, Europe, or other countries or jurisdictions, potentially outside of the Customer or User’s own.
   b. For Personal Data originating from Customer (for the purposes of the Standard Contractual Clauses the “Data Exporter”) established in the European Economic Area and Switzerland (an “EU Transfer”) the Standard Contractual Clauses will apply to the Processing by McAfee outside of the European Economic Area (who, for the purposes of the Standard Contractual Clauses shall be deemed the “Data Importer”). “Standard Contractual Clauses” mean the standard contractual clauses for the transfer of Personal Data from a Data Controller in the European Economic Area to Processors established in third countries under the EU Data Protection Directive 95/46/EC (the “Directive”) or any legislation replacing the Directive, (or any alternative or successor Decision that approves new standard contractual clauses for transfers to Data Processors in third countries). The Standard Contractual Clauses are available on the European Commission’s website at the following link: Standard Contractual Clauses. The Standard Contractual Clauses will cease to apply if McAfee is certified under the EU-US Privacy Shield or if McAfee adopts Processor Binding Corporate Rules or an alternative recognized compliance standard for the lawful transfer of Personal Data (as defined in the Directive) outside the European Economic Area upon notice hereof by McAfee to Customer. If there is any conflict between the Standard Contractual Clauses and this Agreement, the Standard Contractual Clauses shall prevail. Customer is solely responsible for securing any privacy- related rights and permissions from individual persons and third parties as required by regulation, statute, or other law, or by Customer’s internal policies or guidelines, in order to use the Licensed Products or disclose to McAfee any personally identifiable information.
   c. Where required in support of the permitted uses under this Agreement, Personal Data may be shared with third parties, including vendors, suppliers and partners (“Sub-Processors”). McAfee will restrict Sub-Processors access to Personal Data to the extent needed for performance and will impose written contractual obligations that are no less protective of the Personal Data than those obligations set forth in this Agreement.
   d. McAfee may use cookies to store user session information, access codes and application settings to ease site navigation processes.
   e. McAfee will implement technical, organizational and administrative security measures in order to protect the Personal Data it Processes from unauthorized access and misuse while under McAfee’s custody or control. McAfee restricts its personnel from Processing Personal Data without authorization and will impose appropriate obligations upon its personnel, regarding confidentiality, data protection and data security. McAfee will not disclose Personal Data to any third party (including any government agency, court, or law enforcement agency) except with written consent from Customer or as necessary to comply with the law or valid legal process (e.g., subpoena, warrant, or court order). If a third party makes a request to McAfee for access to or correction of Personal Data, McAfee will refuse such request and instruct the third party to request that Personal Data directly from Customer.

10. INTELLECTUAL PROPERTY. The Licensed Products are the sole and exclusive property of McAfee or its licensors, who retain sole ownership of all right, title and interest in Licensed Products, as well as any derivative works thereof. These ownership rights include all Intellectual Property Rights. Customer agrees, on behalf of itself and its Subsidiaries, that Customer and its Subsidiaries will take no action inconsistent with McAfee’s Intellectual Property Rights. Customer agrees that McAfee has the unrestricted right to use suggestions and feedback provided by Customer regarding products and services of McAfee and its affiliates, without notice to, payment to or consent from Customer, and that Customer will treat such suggestions and feedback as the Confidential Information of McAfee, and not Customer. Customer retains all right, title and interest in and to Customer Data.

11. LIMITED WARRANTY, REMEDIES AND DISCLAIMERS.
   a. LIMITED WARRANTY. McAfee warrants that the Cloud Services will substantially in accordance with its Documentation. This warranty is personal to Customer and may not be assigned, transferred or passed-through to any third party. THIS WARRANTY WILL NOT APPLY IF (i) THE CLOUD SERVICES OR SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR ITS DOCUMENTATION; (ii) THE SOFTWARE HAS BEEN MODIFIED BY ANY PERSON OR ENTITY OTHER THAN MCAFEE; OR (iii) A MALFUNCTION IN THE CLOUD SERVICES OR SOFTWARE HAS BEEN CAUSED BY ANY SYSTEMS, EQUIPMENT OR TECHNOLOGY NOT SUPPLIED BY MCAFEE.
b. **LIMITATION OF REMEDY.** The sole and exclusive remedy, and McAfee’s entire obligation and liability, for McAfee’s breach of warranty under this Agreement is for McAfee to repair or replace the Cloud Services to conform with its Documentation. If McAfee is unable to do so, McAfee may, in its own discretion, allow Customer to terminate the Agreement immediately upon notice to McAfee. In such event, if Customer paid fees directly to McAfee and not to a Channel Partner, McAfee will provide to Customer a pro-rata refund of the fees paid under this Agreement for the remainder of the then-current monthly or annual term.

c. **EXCLUSIONS; DISCLAIMERS.**

1. **EXCEPT FOR THE LIMITED WARRANTY IN SECTION 11(a) (Limited Warranty), ALL LICENSED PRODUCTS, SUPPORT, AND OTHER ITEMS ARE PROVIDED TO CUSTOMER “AS IS” AND WITH ALL FAULTS’ AND McAfee MAKES NO REPRESENTATIONS OR WARRANTIES, AND DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION.

2. **WITHOUT LIMITATION, McAfee does not represent or warrant any of the following:** (i) THAT ANY LICENSED PRODUCT, DEVICE, NETWORK, SUPPORT, OR SYSTEM WILL OPERATE UNINTERRUPTED OR BE FAILSAFE OR ERROR-FREE; (ii) THAT ANY LICENSED PRODUCT, DEVICE, ADVICE, REPORT, OR DATA, WILL BE FREE FROM ERRORS OR COMPLY WITH ANY PARTICULAR LAW; (iii) ANY BUSINESS RESULTS CUSTOMER MAY ACHIEVE; (iv) THAT ANY OR ALL SYSTEM VULNERABILITIES OR WEAKNESSES WILL BE DISCOVERED; OR (v) COMPLETE PROTECTION AGAINST ANY SECURITY THREATS OR OTHER POSSIBLE RISKS. CUSTOMER WILL NOT MAKE ANY REPRESENTATION OR MAKE ANY STATEMENT OR UNDERTAKEN ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION 11(c) (Exclusions; Disclaimers).

3. **THE LICENSED PRODUCTS MAY FAIL AND ARE NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH RISK SYSTEMS.** McAfee has no responsibility for all claims, suits, demands, and proceedings alleging, claiming, seeking, or asserting, any liability, loss, obligation, risk, cost, damage, award, penalty, settlement, judgment, fine, or expenses (including attorneys’ fees) arising from or in connection with Customer’s use of the Products on or in a high risk system, including, without limitation, those that (a) could have been prevented by deployment of fail-safe or fault-tolerant features to the high risk system, or (b) are based on a claim, allegation, or assertion that the functioning of the high risk system depends or depended on the functioning of the Products or that the failure of any Product caused a high risk system to fail. As used herein, “High Risk Systems” means any device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in an event of malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High Risk Systems may be required in critical infrastructure; industrial plants; manufacturing facilities; direct life support devices; aircraft, trains, boats or vehicle navigation and communication systems; air traffic control; weapons systems; nuclear facilities; power plants; medical systems and facilities; and transportation facilities.

4. **Third Parties.** The Software and Cloud Services may contain independent third party products and rely upon them to perform certain functionality, including malware definitions or URL filters and algorithms. McAfee makes no warranty as to the accuracy of any such third party information.

5. **Internet Delays.** Cloud services may be subject to limitations, delay and other problems inherent in the use of the internet and electronic communications. McAfee is not responsible for any delays, delivery failures or damages resulting from such problems.

6. **Security.** No data transmission over the Internet can be guaranteed to be secure. McAfee is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside McAfee’s control. Customer is responsible for maintaining the security of its networks, servers, applications and access codes.

12. **PARTNER ACCESS.** Customer acknowledges and agrees that if the Cloud Services are purchased through a Channel Partner, the Channel Partner may have access to: (1) Customer Data; and (2) system administration of Customer’s account, including the ability to configure the account and applicable policies.

13. **LIMITATIONS OF LIABILITY.**

**A. NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL McAfee OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, COMPUTER OR SYSTEM FAILURE OR MALFUNCTION, COSTS OF OBTAINING SUBSTITUTE SOFTWARE OR CLOUD SERVICES, WORK STOPPAGE, DENIAL OF ACCESS OR DOWNTIME, SYSTEM OR SERVICE DISRUPTION OR INTERRUPTION, OR ANY LOST, DAMAGED, OR STOLEN DATA, INFORMATION, OR SYSTEMS. FURTHER, UNDER NO CIRCUMSTANCES WILL McAfee OR ITS
LICENSORS BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATING TO ALLEGATIONS OR CLAIMS THAT THE CLOUD SERVICES OR SOFTWARE WERE NOT FAILSAFE, DID NOT OPERATE INTERUPTION- OR ERROR-FREE, OR DID NOT PROTECT AGAINST ALL SECURITY BREACHES OR ALL POSSIBLE SECURITY THREATS, MALFUNCTIONS, MALICIOUS CODE OR OTHER VULNERABILITIES OR ERRORS IN ANY CLOUD SERVICES OR SOFTWARE CAUSED BY VIRUS, INFECTION, WORM OR SIMILAR MALICIOUS CODE, IN ALL CASES REGARDLESS OF LEGAL THEORY AND WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733.

B. DOLLAR CAP. REGARDLESS OF WHETHER A CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IN NO EVENT WILL THE AGGREGATE TOTAL LIABILITY OF MCAFEE OR ITS LICENSORS UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT EXCEED (a) FOR MONTHLY CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (b) FOR ANNUAL CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, LESS THE AGGREGATE OF ALL AMOUNTS PAID BY SUCH LIABLE PARTY UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER ON ACCOUNT OF PREVIOUS EVENTS OF LIABILITY. THESE LIMITATIONS DO NOT APPLY TO MCAFEE’S INDEMNIFICATION OBLIGATIONS; TO MCAFEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR TO ANY LIMITATION TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

c. RISK ALLOCATION. The exclusions and limitations of liability specifically provided by this Agreement allocate between the parties the risks under this Agreement, some of which may be unknown or undeterminable. The exclusions and limitations were a material inducement for the parties to enter into this Agreement, and the parties have relied upon them in determining whether to enter into this Agreement. Each party expressly agrees to these exclusions and limitations and acknowledges that without them, the fees charged for the Cloud Services or Software would be higher or would not be offered under this Agreement.

d. ACTIONS. Except for claims related to non-payment, or to Customer’s breaches of Section 2 (Right of Use and Restrictions), Section 8 (Confidentiality) or Section 21 (Compliance), neither party may bring any legal action for any relief arising out of any matter relating to this Agreement more than 6 years after the party knew or should have known of the event giving rise to the claim or action.

14. [RESERVED]

15. MCAFEE INDEMNITY.

a. McAfee will indemnify and, at its election, defend Customer against claims asserted against Customer in any suit or proceeding for direct patent or copyright infringement, or for McAfee’s trade secret misappropriation, asserted against the Cloud Services or Software, as and in the form provided by McAfee under this Agreement alone and not in combination with anything.

b. Notwithstanding anything else, McAfee has no obligation under this Section 15 (MCAFEE Indemnity) with respect to the following: (a) any claim (such as a counterclaim) that is made in response to a suit or proceeding first filed by Customer, including, without limitation, alleging patent infringement; or (b) any claim based on the extent actually or allegedly based on any of the following: (i) elements or features in, or operation of, software, services, or other material not supplied by McAfee, (ii) McAfee’s inclusion or use of software, services, technology, or material provided by Customer, (iii) McAfee’s compliance with Customer’s designs, specifications, or instructions, (iv) modification of any Software by anyone other than McAfee, (v) use of any Cloud Services or Software where that use is contrary to the specifications or instructions for use, or the terms of this Agreement, (vi) combination of any Cloud Services or Software with anything, (vii) the Cloud Services or Software implements or complies with, in whole or in part, as provided or when used, a Standard, (viii) Customer willfully infringed, (ix) McAfee, Customer, or the Cloud Services or Software indirectly infringes, including by inducing or contributing to another’s infringement, or (x) activity that occurs after Customer is notified of the claim and is provided with modifications or other action that would avoid the claimed infringement.

c. McAfee’s indemnity obligations are conditioned on Customer’s prompt written notice to McAfee of a claim and on Customer’s tender to McAfee of the right to control and conduct the defense and any settlement of the claim, to the extent permitted under 28 U.S.C. § 516. Customer must fully and timely cooperate with McAfee and provide McAfee with all reasonably requested authority, information, and assistance. McAfee is not responsible for any costs, expenses, or compromise incurred or made by Customer without McAfee’s prior written consent.

d. At its option, McAfee will control and conduct the defense and any settlement of indemnified claims. McAfee, in its sole discretion and at its own expense, may (a) procure for Customer the right to continue using the Cloud Services or Software; (b) replace any affected Cloud Services or Software with non-infringing Cloud Services or Software; (c) modify any affected Cloud Services or Software so that it becomes non-infringing; or (d) upon McAfee’s receipt of Customer’s written representation and promise that it has removed all instances of the affected Software and will not use the affected Software and Cloud Services, credit or refund to Customer a pro-rata portion of the amounts already paid by Customer for the affected Cloud Services for the remainder of the applicable License Period.

e. The indemnity provided in this Section 15 (MCAFEE Indemnity) states McAfee’s entire obligation and liability and Customer’s exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Cloud Services or Software. This indemnity is personal to Customer and may not be assigned, transferred, or passed through to any third party.

f. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

16. WAIVER. A party’s failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the party agreeing to the waiver.
17. GOVERNING LAW; DISPUTE RESOLUTION. This Agreement and any dispute arising out of or relating to it will be governed by the Federal laws of the United States, without regard to conflict of laws principles. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (1980).

18. NOTICES. All legal notices to McAfee under this Agreement must be addressed to “Attention: Legal Department” 5000 Headquarters Dr., Plano, TX 75024. All legal notices to Customer may be sent using the contact information on file with McAfee, as specified in the registration information provided by Customer when purchasing or registering for the Cloud Services. Notices shall be deemed effective upon receipt. It is Customer’s obligation to ensure McAfee has the most current contact information.

19. [RESERVED]

20. ASSIGNMENT. Neither party may assign this Agreement, whether by contract, operation of law or otherwise, without the prior written permission of the other party. Any attempt by Customer to assign this Agreement, including any rights, duties, or obligations under this Agreement, without the other party’s written consent will be a material breach of this Agreement and will be null and void.

21. COMPLIANCE. Each Party will comply with all applicable laws in the conduct of its business with respect to its rights and obligations under this Agreement, including, without limitation, applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and other applicable anti-corruption laws. Customer may not, directly or indirectly, export or transmit any Licensed Products or technical data (or any part thereof) or any process or service that is produced by any Licensed Products, to any country to which such export or transmission is restricted by applicable law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any such other applicable governmental entity as may have jurisdiction over such export or transmission. Customer will not use the Licensed Products for the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, demilitarization, destruction, processing, use, configuration, adaptation or modification of any defense, military, intelligence, nuclear, or space article or activity, or missile technology including, without limitation, those items enumerated on (a) Wassenaar Arrangement’s Sensitive List, Very Sensitive List and/or Munitions List; (b) the International Traffic in Arms Regulations (“ITAR”) United States Munitions List (“USML,” 22 C.F.R. pt. 121); or (c) the Common Military List of the European Union, unless authorized by the U.S. Government by regulation or specific license. Customer will not discuss, disclose, or release to McAfee any Confidential Information directly related to any defense, military, intelligence, nuclear, or space article or activity. Customer will not transfer, resell, divert, export or re-export any Licensed Products or any related technical information or materials (i) into any U.S. embargoed countries, or (ii) to any person or entity listed on a denial order published by the U.S. government or any other applicable government. Customer represents and warrants that neither the Bureau of Industry and Security nor any other agency or government has suspended, revoked or denied Customer’s export privileges and that Customer will not provide any Licensed Products to any person or entity whose export privileges have been suspended, revoked, or denied. McAfee products may require authorization from the U.S. and other applicable authorities including, without limitation, the European Union, prior to export, import or use restrictions in other countries. Additional information regarding compliance with export control laws can be found at: http://www.mcafee.com/us/about/export-compliance.aspx.

22. NOTICE TO U.S. GOVERNMENT END USERS: The Software and Cloud Services are deemed to be "commercial computer software" and "commercial computer software documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212, if either is applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Cloud Services by the United States Government shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by this Agreement.

23. FORCE MAJEURE. Excusable delays shall be governed by FAR 52.212-4(f).

24. ENTIRE AGREEMENT. This Agreement represents the entire agreement between McAfee and the Ordering Activity with regard to Cloud Services and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee and duly warranted Contracting Officer. However, this Agreement, including without limitation its termination, has no effect on any signed nondisclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail absent any agreed-upon different, conflicting, or additional provisions that may appear on any purchase order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement.

25. SEVERABILITY. The Parties intend that if a court holds that any provision or part of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision or part to the minimum extent necessary to make it valid and enforceable, or if it cannot be made valid and enforceable, the court will sever and delete the provision or part from this Agreement. Any change to or deletion of a provision or part of this Agreement under this Section will not affect the validity or enforceability of the remainder of this Agreement, which will continue in full force and effect.

26. REMEDIES. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

27. RELATIONSHIP. The relationship of McAfee and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement (a) gives either party the power to direct and control the day-to-day activities of the other party; (b) constitutes the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (c) allows either party to create or assume any obligation on behalf of the other party. The relationship contemplated by this Agreement is non-exclusive and does not prohibit either party from entering into any arrangements with any third parties. Each party understands and acknowledges that (a) the other party may develop or acquire technology, software, hardware, and data for its own products and services, and that existing or planned products and services developed or acquired by a party, may contain ideas or concepts similar or identical to those in the Confidential Information or Licensed Products under this Agreement; and (b) entering into this Agreement does not preclude a party from developing or acquiring any products without obligation to the other party.

28. SUPPLEMENTAL TERMS; GRANT LETTER. In the event of a conflict between a Grant Letter, the Supplemental Terms and/or the Subscription Agreement, the Supplemental Terms shall control over the Grant Letter and Subscription Agreement, but solely as to the relevant Service, and the Subscription Agreement shall control over the Grant Letter.

29. THIRD PARTIES. All warranty disclaimers and limitations of remedies and damages in this Agreement that are applicable to McAfee (including, without limitation, the warranty disclaimers and limitations of liability) also extend to and apply in respect of McAfee’s affiliates, third party supplies and licensors who are GSA Schedule 70 contract holders. Except as provided in this Section (Third Parties), the parties do not intend, nor may
any clause of this Agreement be interpreted, to create under this Agreement any obligations or benefits to, or rights in, any third party from either McAfee or Customer.

SUPPLEMENTAL TERMS AND CONDITIONS

A. On-Premise Software License

The following terms and conditions (“Supplemental Terms”) apply to all Customers using OnPremise Software, and are incorporated into the Agreement:

1. DEFINITIONS. Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
   a. “On-Premise Software” means Software that is identified in the applicable Grant Letter and that can be used without any Cloud Services. On-Premise Software may also include additional features or functionality that can be accessed only with either a current subscription or active support contract to certain Cloud Services, as required by the specific offering.

2. ON-PREMISE SOFTWARE LICENSE AGREEMENT. All On-Premise Software is delivered subject to the McAfee End User License Agreement (“EULA”), which is attached hereto. The terms of this Subscription Agreement and the Supplemental Terms and Conditions are intended to supplement the EULA with respect to On-Premise Software.

3. CLOUD SERVICES REQUIREMENT. Certain features or functionality of the On-Premise Software require either a current subscription or an active support contract to access accompanying Cloud Services. Customer’s purchase of a license for On-Premise Software includes only the features and functionality of the On-Premise Software that do not require Cloud Services, and does not entitle Customer to the accompanying features and functionality of the Cloud Services.

4. UPDATES AND UPGRADES. After Customer’s purchased support period for On-Premise Software expires, Customer has no further rights to receive any Updates or Upgrades to the On-Premise Software.

B. Free Services

The following terms and conditions (“Supplemental Terms”) apply to all Customers using Free Services, and are incorporated into the Agreement:

1. DEFINITIONS. Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
   a. In addition to the definition set forth in the Subscription Agreement, “Cloud Services” includes free versions of the cloud services that McAfee provides to Customer as specified in one or more Grant Letters, including (i) any features or functionality included in a paid subscription for which McAfee no longer charges or which McAfee offers to Customer at no charge in McAfee’s sole discretion, and (ii) other features or functionality that McAfee makes available to Customer without charge, that is labeled as “Pre-Release,” “Limited Release,” “Beta” or otherwise identified by McAfee as experimental, untested, or not fully functional, and which is not a time-limited trial for Customer’s evaluation purposes (each “Free Services”). “Free Services” also includes any accompanying Software or service that McAfee provides without charge to Customer as a courtesy and in McAfee’s sole discretion.

2. LICENSE PERIOD. For Free Services, subject to the terms of the Agreement, the License Period continues for as long as McAfee makes such Free Services available to Customer. McAfee may choose to provide Free Services to Customer prior to, during, or after Customer’s paid subscription to Cloud Services or Software, and any use is subject to the terms of the Agreement then in effect for as long as the Free Services are made available to Customer.

3. UPDATES / ASSISTANCE / END-OF-LIFE. Any updates or end-user assistance provided for Free Services are provided at McAfee’s sole discretion and may be discontinued at any time. From time to time, at McAfee’s sole discretion, McAfee may elect to discontinue certain Free Services or particular features of the Free Services (“Free Services Termination”). Free Services are specifically excluded from McAfee’s End-of-Life-Policy. Instead, McAfee will make commercially reasonable efforts to provide thirty (30) days’ prior notice to Customer of a Free Services Termination. McAfee has no obligation to provide any Support to Customers for the Free Services.

4. COMMUNITY FORUM. At their convenience, Customers may exchange ideas and technical insight regarding the Free Services on the Cloud Visibility - Community Edition page located at: https://community.mcafee.com/community/business/data/cloud-visibility.

McAfee does not endorse, warrant or guarantee any information posted on this site and any use of the information is taken at Customer’s sole risk.

5. DISCLAIMER. Customer acknowledges that the Free Services may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss. CONSEQUENTLY, THE LIMITED WARRANTY IN SECTION 11(a) OF THE SUBSCRIPTION AGREEMENT DOES NOT APPLY TO FREE SERVICES. INSTEAD, FREE SERVICES ARE PROVIDED TO CUSTOMER SOLELY ON AN “AS IS” BASIS, AND MCAFEE DISCLAIMS ALL WARRANTIES AND LIABILITY IN CONNECTION WITH THE FREE SERVICES. CUSTOMER ASSUMES ALL RISK OF USE OF FREE SERVICES. In addition, Customer acknowledges that McAfee has not promised or guaranteed to Customer that Free Services will be announced or made available to anyone in the future, that McAfee has no express or implied obligation to Customer to announce or introduce Free Services, and that McAfee is not obligated to introduce a product similar to or compatible with Free Services or any updates to any Free Services.

6. NO SERVICE LEVEL AGREEMENT. Any Service Level Agreement that, in McAfee’s sole discretion, is offered or may be offered for the Cloud Services, does not apply to Free Services. In the event of a covered outage or other issues with the Free Services, Customer and other users of the Free Services may not make a claim under the Service Level Agreement.

7. LIMITATION OF LIABILITY. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE AGGREGATE LIABILITY OF MCAFEE AND LICENSORS IN CONNECTION WITH THE FREE SERVICES SHALL BE LIMITED TO THE SUM OF ONE HUNDRED UNITED STATES DOLLARS ($100) (OR THE THEN-CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.

8. FREE SERVICE DATA STORAGE. McAfee has no obligation to retain any Customer Data or other Customer information submitted or collected through the Free Services. McAfee may delete any such Customer Data and other Customer information at its own discretion and without prior notice to Customer.
Cookie Notice

Our Sites (as defined below) use Cookies and Similar Technologies to ensure that we give our visitors the best possible experience by providing you personalized information, remembering your marketing and product preferences, and helping you obtain the right information. You can find out more about Cookies and Similar Technologies, how we use them, and how to control them below.

Use of Cookies and Similar Technologies

This Notice describes how McAfee (including certain McAfee Affiliates and Service Providers) (collectively "we" or "us") uses Cookies and Similar Technologies (such as pixel tags, web beacons, clear GIFs, JavaScript, and local storage). We will refer to these Cookies and Similar Technologies simply as “Tracking Technologies” for the rest of Notice. We will also describe what options you may have regarding Tracking Technologies. This Notice covers the use of Cookies that may be used in connection with McAfee’s websites, mobile websites, and apps (the “Sites”).

In some cases, we may use Tracking Technologies to collect information that is personally identifiable, or that can become personally identifiable if we combine it with other information. In such cases, our Privacy Policy will apply in addition to this Cookie Notice.

What Are Tracking Technologies?

Cookies are small files—usually consisting of letters and numbers—placed on your computer, tablet, phone, or similar device, when you use that device to visit a website. Cookies are widely used by website owners and their service providers or partners to make their websites operate, work more efficiently, and provide analytic information.

These are the different types of Cookies used on our Sites:

* **Essential Cookies.** These Cookies are required for the operation of our Sites (for example, to enable you to log into secure areas of our website or use a shopping cart). These Cookies enable you to move around the Sites and use their features. Disabling these Cookies will encumber the Sites’ performance and may make the features and service unavailable.

* **Analytics and Customization Cookies.** These Cookies allow us to analyze activities on our Sites and on other sites where we post content in order to improve and optimize the way our Sites work. For example, we may use these types of Cookies to ensure that visitors can easily find the information they are looking for. One way we do this is to recognize and count the number of visitors and see how they move around a Site when they are using it. Analytics cookies also help us measure the performance of our advertising campaigns in order to help us improve our advertising campaigns and to optimize our Sites’ content for those who engage with our advertising.

* **Functionality Cookies.** These Cookies are used to recognize you when you return to our Sites. This enables us to personalize our content for you, greet you by name, and remember your preferences (for example, your choice of language or region).

* **Advertising Cookies.** These Cookies record your online activities, including your visits to our Sites, the pages you have visited, and the links and advertisements you have clicked. One purpose of this is to help make the content displayed on our Sites more relevant to you. Another purpose is to allow delivery of advertisements or other communications to you that are designed to be more relevant to your apparent interests. Delivery of interest-based advertising may involve us, our service providers and partners such as publishers, data management platforms, and demand side platforms. For example, if you look at a page on one of our Sites, we may cause an advertisement to be delivered to you, on our Site or on other sites, for products referenced on that page or for similar products and services. We and our service providers and partners may also append other data to information collected by these Cookies, including information obtained from third parties, and share this information with third parties for the purpose of delivering ads to you.

* **Flash Cookies.** A Flash Cookie is a small data file placed on a computer using Adobe Flash or similar technology that may be built into your computer or downloaded or installed by you to your computer. We use these technologies to personalize and enhance your online experience, facilitate processes, and personalize and store your settings. Flash cookies may help our website visitors to, for example, set volume preference associated with a video experience, play games, and perform surveys. They help us improve our sites by measuring which areas are of greatest interest to guests. They may be recognized by other sites or by our marketing or business partners. Flash cookies are different from browser cookies and the cookie management tools provided by your browser may not remove Flash cookies. **Click here** to learn how to manage privacy and storage settings for Flash cookies. If you disable Flash cookies or other similar technologies, please be aware that you may not have access to certain features and services that make your online experience more efficient and enjoyable.

* **Web Beacon.** A Web Beacon is a very small clear picture file used to keep track of your navigation through a single website or a series of websites. They may also be referred to as “Web Bugs” or “Clear Gifs.” Web Beacons may be used with cookies to gain an understanding of how a website’s users navigate through the website.

How Do We Collect and Use Other Information?

We and our service providers may use Tracking Technologies for a variety of purposes, including to:

* Help us and third parties obtain information about your visits to the Sites;

  * Process your orders;

  * Analyze your visiting patterns to improve our Sites;

  * Deliver advertising, communications, and content from us and third parties, on our Sites and those of third parties, specific to your interests;

  * Remember your language and other preferences;

  * Help you obtain information you are looking for;

  * Provide a safe and secure service for online transactions;

  * Measure how many people use our Sites, and how they use them;

  * To keep our Sites running efficiently.

If you register on one of our Sites, or otherwise provide us with your personal information, we may associate that information with other information we collect from or about you, information regarding your use of our Sites, or information we receive about you from third parties. We may use this combined data for purposes consistent with our Privacy Policy, including for marketing.

How Long Do Tracking Technologies Stay on My Device?

Some Cookies will stay on your device between browsing sessions—they do not expire when you close your browser. These Cookies are called “persistent” Cookies. The length of time a persistent Cookie stays on your device varies from Cookie to Cookie. We and others use persistent Cookies for a variety of purposes, such as to store your preferences so that they are available for the next visit, and to keep a more accurate account of how often you visit our Sites, how often you return, how your use of the Sites may vary over time, and the effectiveness of advertising efforts.

Other Cookies operate from the time you visit our Site to the end of that particular web browsing session. These Cookies expire and are automatically deleted when you close your Internet browser. These Cookies are called “session” Cookies.

Who Puts Tracking Technologies on My Device?
Cookies may be placed on your device by McAfee as the Site operator. These Cookies are called “first party” Cookies. Some Cookies may be placed on your device by a party other than McAfee. These Cookies are called “third-party” Cookies. For example, a McAfee partner may place a third-party Cookie to enable online chat services.

Cookies may also be used that allow us and third parties to know when you visit our Sites, and to understand how you interact with emails, advertisements, or other content. Through Cookies, aggregate and other information not identifying individual users (such as your operating system, browser version, and the URL you came from, including from emails and advertisements) may be obtained and used to enhance your experience and understand traffic patterns. This technology counts the number of users who visit a particular service from specific banner advertisements outside the McAfee Site or who clicked on links or graphics included in email newsletters received from McAfee. It is also used as a tool to compile aggregated statistics about how McAfee Sites are used, to perform analytics and help us to optimize our Sites, and to help serve you advertising based on your interests, as described in further detail below.

How Does McAfee Use Online and Mobile Advertising?

We and third parties, including technology partners, and service providers engage in interest-based advertising to deliver advertisements and personalized content that we and other advertisers believe will be of interest to you. To the extent third-party vendors are using Cookies to perform these services for us, McAfee does not control the use of this technology or the resulting information, and is not responsible for any actions or policies of such third parties. We identify some resources in this Notice (see “How do I Manage Tracking Technologies” below) that can help you. Ads may be delivered to you based on your online or mobile behavior (on McAfee Sites or other sites), your search activity, your responses to one of our advertisements or emails, the pages you visit, your general geographic location, or other information. These ads may appear on our Sites or on third-party websites. The technology partners with whom we work to help us conduct interest-based advertising may be members of self-regulatory associations such as the Network Advertising Initiative (NAI) and the Digital Advertising Alliance (DAA). For Sites directed at persons located in the European Union, we may work with technology partners who are members of the European Digital Advertising Alliance (eDAA). You may also see advertisements for third parties on our Sites or other websites or properties, based on your visits to, and activities on, our Sites and other sites.

How Do I Manage Tracking Technologies?

You can decide whether or not to accept Cookies. One way you can do this is through your Internet browser’s settings. Most Internet browsers allow some control of most Cookies through the browser settings (Please note that if you use your browser settings to block all Cookies you may not be able to fully use the Site.). You can find information online about how to manage Cookies. For example, the following links provide information on how to adjust the Cookies settings on some popular browsers:

* Apple Safari
* Google Chrome
* Microsoft Internet Explorer
* Mozilla Firefox

You can also use a browser plug-in such as Ghostery or the Tracking Protection List from TRUSTe. (A browser plug-in is a piece of software which adds extra capabilities to your browser—for example, to play video or scan for viruses), Adobe Flash Player is software for viewing multimedia on a computer. Websites that use Adobe Flash may store Flash Cookies. Flash Cookies may also be known as Flash Local Shared Objects (LSOs). McAfee may use Flash LSOs to provide special content, such as video and animation playback.

To find out more about interest-based advertising and your choices, visit these sites: Digital Advertising Alliance, the Network Advertising Initiative, and the Interactive Advertising Bureau (IAB) Europe. You can opt out of the use of Cookies to tailor content or advertising to you by visiting the following links. Note that if you choose to opt out, you won’t necessarily see fewer ads. However, the ads you see may be less relevant to your interests.

* [http://www.networkadvertising.org/managing/opt_out.asp](http://www.networkadvertising.org/managing/opt_out.asp)
* [http://www.aboutads.info/choices](http://www.aboutads.info/choices)

How Does McAfee respond to a Do Not Track Signal?

There is currently no industry agreement upon response to a Do Not Track signal. At this time, McAfee Services and Sites do not respond to a user’s Do Not Track signal.

Privacy


How to Contact Us

If you have any questions about how we use Cookies, you can contact us using the information set forth below. Please include your contact information and a detailed description of Cookie concern.

McAfee LLC

Attn: Legal Department – Privacy Office,

5000 Headquarters Drive, Plano TX 75024

* Email: privacy@mcafee.com
* Telephone: +1 972-963-7902

This Notice updates and supersedes previous versions. We may change this Notice at any time. Changes to this Notice must be agreed to by both parties in writing prior to becoming effective. The “LAST UPDATED” section at the bottom of this page lists when this Notice was last revised. LAST UPDATED: April 3, 2017

McAfee Privacy Notice

Effective Date: April 3, 2017

This Notice provides information about data we collect, use, and share, and our commitment to using the personal data we collect in a respectful fashion.

• Privacy Notice Overview
• Why Do We Collect Information and Data?
• What Kinds of Personal Information Do We Collect?
• How Do We Collect Information?
We at McAfee, LLC and our affiliates with whom you have a business relationship ("McAfee", "we", "us") care deeply about privacy, security, and online safety, all of which are a significant part of our essential mission: to protect users of our products and services ("you", "your") from the risks of theft, disruption, and unauthorized access to their online information and activities. This Privacy Notice ("Notice") is designed to inform you about how we collect, use, and share your personal information.

This Privacy Notice applies to personal information we obtain from individuals through our websites, products, services, and web-based applications (collectively, the "Services"). In addition, some of our products and services, such as our wide array of mobile applications ("Apps"), are subject to a separate privacy notice. If a separate privacy notice applies to a particular product or service, for example, such as our Mobile App Privacy Statement, we will post it on our website (our "Site").

When you access or use our Services, you acknowledge that you have read this Notice and understand its contents. Your use of our Services and any dispute over privacy is subject to this Notice and our Terms of Service (including any applicable limitations on damages and the resolution of disputes).

As McAfee grows, our business changes, and we may update this Notice, or other privacy notices that we establish for individual products, at any time as we deem appropriate to reflect those changes. Both parties must agree to the changes in writing prior to the changes going into effect.

Why Do We Collect Information and Data?

We rely on a wide variety of information to run our business. In some instances, this information may include data that could be used to identify a particular individual, otherwise referred to as Personal Information. In this Notice, we will provide multiple examples of how Personal Information we collect may be used and why it is important. For example, when a consumer purchases one of our products we must collect their name, email address, and payment information to complete the transaction. Some of the reasons that we collect Personal Information include to:

- Provide our products and services, including our Apps and this Site, and improve them over time;
- Allow you to download and purchase products and services;
- Personalize and manage our relationship with you, including introducing you to products or services that may be of interest to you or to provide customer support;
- Investigate, respond to, and manage inquiries or events;
- Work with and respond to law enforcement and regulators; and
- Research matters relating to our business such as security threats and vulnerabilities.

What Kinds of Personal Information Do We Collect?

The following are examples of the type of Personal Information that may be collected. The specific kind of information collected will depend on the services used:

- Contact information (such as name, email address, mailing address, and phone number);
- Payment information (including payment card numbers, billing address, and bank account information);
- McAfee purchase or product/service use history;
- Account log-in credentials;
- Your location;
- Your interests;
- Demographic information;
- Photographs, images, video, and related hash values; or
- Biometric data such as fingerprints or voice recordings.

In addition to the above, we may also collect other information related to user interactions with or use of our Services ("Usage Data"). Much of this Usage Data, for example, clickstream data and aggregate usage statistics, is generally not personally identifying. On the other hand, some of this Usage Data either alone or when combined or linked with your Personal Information, may allow your identity to be discovered. In such cases, we treat the combined data as Personal Information. In many cases, Usage Data is gathered automatically by systems or technology such as cookies (see more information about Information Collected Automatically below).

The following are examples of the type of Usage Data that may be collected by McAfee from your web browser or related to your interactions with our products and services:

- Details about your computers, devices, applications, and networks (including IP address, browser characteristics, device ID, operating system, and language preferences);
- Activities on our websites and usage patterns of products and services (including referring URLs, dates and times of website visits, and clickstream data);
- Details about Internet, App, or network usage (including URLs or domain names of websites you visit, information about applications that attempt to access your network, or traffic data);
- Data about files and communications, such as potential malware or spam (which may include computer files, emails and attachments, email addresses, metadata, and traffic data, or portions or hashes—a hash file is a file that has been converted into a numerical string by a mathematical algorithm—of any of this information).

How Do We Collect Information?
We collect information directly from you, as well as automatically through your use of our Services and, in some cases, from third parties.

**Information That You Give Us:** Typically the information we collect directly from you are your contact details, payment or billing data, and relationship information like the content of customer service requests that you initiate, reviews you submit on our products, or responses to surveys. You decide how much information to share with us in most cases, but not sharing required information may limit your ability to engage in certain activities, such as payment information required to complete a purchase.

**Information Collected Automatically:** When you use or interact with our Site and Services, we receive and store information generated by your activity, like Usage Data, and other information automatically collected from your browser or mobile device. This information may include your IP address; browser type and version; preferred language; geographic location using IP address or the GPS, wireless, or Bluetooth technology on your device; operating system and computer platform; purchase history; the full Uniform Resource Locator (URL) clickablestream to, through, and from our Site, including date and time; products you viewed or searched for; and areas of our Site that you visited. We also may log the length of time of your visit and the number of times you visit and purchase or use the Services. We may assign you one or more unique identifiers to help keep track of your future visits.

In most cases, this information is generated by various tracking technologies. Tracking technologies may include "cookies," "flash LSOs," "web beacons" or "web bugs," and "clear GIFs." You can read about how we use cookies and other tracking technologies here and also learn about the choices you can make to limit their use.

Please see our Cookie Notice for more information about the cookies and other similar technologies that we use.

**Information from Other Sources:** If we receive any information about you from other sources, we may add it to the information we already have about you. For example, if we receive a list of subscribers to a publication and we note that you are a user of our products and also a subscriber, we may combine that information. Examples of information we may receive from other sources includes updated delivery or payment information which we use to correct our records, purchase or redemption information, customer support or enrollment information, page view, search term and search result information from business partners, and credit or identity information which we use to help prevent and detect fraud.

**How Do We Use Personal Information?**

Every time you turn on a device, connect to a network, or open a file, you are exposed to significant risk from hackers, malware, spyware, and other forms of unauthorized access to your data and systems. Security products and services, such as McAfee’s, are designed to help protect you from these risks.

**Security and Threat Detection.** By collecting and processing data, including Personal Information, McAfee can help to predict threats and better protect you, your devices, and your information. For example, McAfee may use your information to:

- Analyze data sent to/from your device(s) to isolate and identify threats, vulnerabilities, suspicious activity, and attacks;
- Assess the reputation of a device or file to advise you on whether access should be granted;
- Participate in threat intelligence networks and conduct research and analysis, including market and consumer research and trend analysis; and
- Adapt products and services to respond to new threats.

**Business Uses.** In addition, we may use Personal Information for other business purposes, including to:

- Analyze users’ behavior when using McAfee products and services to customize preferences;
- Establish and manage McAfee accounts;
- Collect and process payments and complete transactions;
- Provide customer support, manage subscriptions, and respond to requests, questions, and comments;
- Communicate about, and administer participation in, special events, programs, surveys, contests, sweepstakes, and other offers and promotions;
- Enable posting on our blogs and other communications;
- Customize, measure, and improve our websites, products, services, and advertising;
- Analyze and develop new products, services, and websites;
- Perform accounting, auditing, billing, reconciliation, and collection activities;
- Prevent, detect, identify, investigate, respond, and protect against potential or actual claims, liabilities, prohibited behavior, and criminal activity;
- Comply with and enforce applicable legal requirements, agreements, and policies; and
- Perform other activities consistent with this Notice.

**Processing as Part of the Services.** We also process certain information as an integral part of our Services. If you install or use one of our products or services, software will operate in the background of your computer system or device environment to perform specific security and privacy tasks including:

- Spam protection;
- Virus protection;
- Intrusion detection, prevention, and protection;
- Threat prevention and prediction;
- Network defense;
- Data encryption;
- Mobile device lockdown; and Back-up and recovery activities.

**Product Updating and Reporting.** Our products and services may also process certain data to provide updates and reports. These update functions may check your system to see whether files relating to the services need to be refreshed or modernized. For example, products and services may transmit report files to McAfee. These files contain information, including the number of checked, suspicious, infected, or unwanted files or emails, the number of infections, the date and hash values of the detected infections, and the number of false negatives/false positives.

The purpose of these reports is to analyze the frequency of particular infections or the prevalence of threats. McAfee also uses the information to adapt the product to conform to user preferences based on actual use.
SUPPORTING FREE PRODUCTS AND SERVICES
We continually make a variety of free products available to our customers. In order to keep these products free, we may use information collected through some of our products, such as information about websites you visit, to support interest-based advertising by us or our partners. We do this by sharing information with trusted third parties about your browser and web browsing activity that does not identify you personally. These companies are not permitted to use the information we provide to them to identify you, and are required to use the information we provide only in accordance with our privacy commitments to you. Our products that use data in this way also include built-in features allowing you to opt out of this sharing.

When Do We Share Personal Information?
We respect the importance of privacy. Other than as provided in this privacy policy, we do not sell your Personal Information, nor do we share it with unaffiliated third parties for their own marketing use, unless we have your consent or we are required by law to do so. Generally, we may disclose the information we collect, including Personal Information, in order to facilitate our provision of the Services or communications with customers (e.g., to service providers who perform functions on our behalf), to operate our business, to advertise or promote our Services, to facilitate changes to or transfers of our business, as required by law, or with your consent. We may share Personal Information in the following ways:

- Current and future members of the McAfee family of companies for the purposes described in this Notice, such as to: (i) provide services and content (e.g., registration, sales, and customer support); (ii) help detect and prevent illegal acts and violations of our policies; and (iii) guide our decisions about our products, services, and communications;
- Other users where integral to particular Services where you have chosen to share such information, or where you have posted user content (e.g., comments and reviews, social media posts, photos or locations to groups you create);
- Authorized service providers who perform services for us (including cloud services, data storage, sales, marketing, investigations, payment processing, customer support, and bill collection). Our contracts with our service providers include commitments that they agree to limit their use of Personal Information and to comply with privacy and security standards at least as stringent as the terms of this Privacy Notice. Remember that if you provide Personal Information directly to a third party, such as through a link on McAfee’s website, the processing is typically based on their standards (which may not be the same as McAfee’s);
- If we believe disclosure is necessary and appropriate to prevent physical, financial, or other harm, injury, or loss, including to protect against fraud or credit risk.
- To legal, governmental, or judicial authorities, as instructed or required by those authorities or applicable laws, or in relation to a legal activity, such as in response to a subpoena or investigating suspected illicit activity (including identifying those who use our services for illegal activities). We reserve the right to report to law enforcement agencies activities that we in good faith believe to be illegal.
- In connection with, or during negotiations of, an acquisition, merger, asset sale, or other similar business transfer that involves substantially all of our assets or functions where Personal Information is transferred or shared as part of the business assets (provided that such party agrees to use such Personal Information in a manner that is consistent with this Notice).
- In order to provide marketing and advertising content about our products, or other products which may interest you, we may share your Usage Data, as well as anonymized information with third-party ad networks, social media partners, and similar providers. A more detailed discussion of our relationship with third-party advertisers is set forth below under the heading "Third-Party Advertising".
- With others only after obtaining your consent. If we want to share Personal Information other than as permitted or described above, we will provide you with a choice to opt in to such sharing and you may choose to instruct us not to share the information.

YOUR CALIFORNIA PRIVACY RIGHTS - SHINE THE LIGHT LAW
McAfee does not share your Personal Information with non-affiliated third parties for their own marketing use without your permission.

Third-Party Advertising
Advertising is a way for McAfee to subsidize many of our free products and services and also provides a way to inform you about products or services that we think may be of interest to you. We have agreements with third-party advertising companies to display or deliver ads to you while you are on our Site or using some of our other products, like Apps. These third-party advertisers may automatically receive Usage Data when this happens. They may also download cookies to your computer, or use other technologies such as JavaScript and "web beacons" (also known as “1x1 gifs” or "clear gifs") to measure the effectiveness of their ads and to personalize advertising content. Doing this allows the advertising network to recognize your computer or device each time you send them an advertisement. In this way, they may compile information about where individuals using your computer or browser saw their advertisements and determine which advertisements are clicked. Third-Party Advertisers may also serve advertisements to you on other websites, based on their tracking of what content you looked at or interacted with on Our Websites. Other than as described in this Notice, we do not give third-party advertisers your contact information such as email address, phone number, or address.

See our Cookie Notice to learn more about how McAfee uses tracking technologies like cookies and how you can opt out of such technologies and advertising. This Notice does not cover the use of cookies or other tracking technologies by any of our advertisers.

If you have provided our Apps with access to your location, our mobile advertising partners may use your location to target advertisements to you. You can use the location features on your device to disable this targeting.

Do Not Track Disclosure: Our Site does not respond to Do Not Track signals. You may, however, disable certain tracking as discussed above (e.g., by disabling cookies). For more information about Do Not Track signals, please click here.

We use administrative, organizational, technical, and physical safeguards to protect the Personal Information we collect and process. Our security controls are designed to maintain an appropriate level of data confidentiality, integrity, and availability. We regularly test our website, data centers, systems, and other assets for security vulnerabilities.

McAfee handles payment card data in a manner consistent with the Payment Card Industry Data Security Standard (PCI-DSS). For example, when you make a payment on our website using your credit card, we use SSL encryption for transmission of the credit card number.

What Choices Do You Have About Your Personal Information?
We offer certain choices about how we communicate with our users and what Personal Information we obtain about them. Many McAfee products allow users to make choices about the Personal Information collected.

- You may choose not to receive marketing communications from us by clicking on the unsubscribe link or other instructions in our marketing emails, visiting the My Account section on our website, or contacting us as specified in the “Contact Us” section below.

GS-3SF-0511T
• Many McAfee products contain settings that allow users or administrators to control how the products collect information. Please refer to the relevant product manual or contact us through the appropriate technical support channel for assistance.
• To remove your Personal Information from a McAfee website testimonial, please contact customer service.

If you chose to no longer receive marketing information, McAfee may still communicate with you regarding such things as security updates, product functionality, responses to service requests, or other transactional, non-marketing/administrative related purposes.

HOW YOU CAN ACCESS AND CORRECT INACCURACIES
If you subscribe to McAfee products, you can access and correct the Personal Information in your profile by visiting My Account. Alternatively, you may request access or changes to, or removal of, your Personal Information in accordance with applicable laws by contacting us as indicated below. For some requests, an administrative fee may be charged (where permitted by law). We will advise you of any applicable fee prior to performing your request.

Data Retention
The time periods for which we retain your Personal Information depend on the purposes for which we use it. McAfee will keep your Personal Information for as long as you are a registered subscriber or user of our products or for as long as we have another business purpose to do so and, thereafter, for no longer than is required or permitted by law, or McAfee's Records Retention Policy, reasonably necessary for internal reporting and reconciliation purposes, or to provide you with feedback or information you might request. The information we collect may be stored and processed in servers in the United States and wherever McAfee and our service providers have facilities around the globe.

Children’s Privacy
Some of McAfee's Services provide security features that may be used to monitor children’s activity online, physical location, or when they are using a registered device. McAfee does not knowingly collect Personal Information from children under the age of 13 without first obtaining parental consent in accordance with applicable laws like the Children’s Online Privacy Protection Act of the United States and similar laws around the world. For products that may be used with children, there are options for parents or legal guardians to delete their child’s profile at any time and at the parent or guardian's option. We do not knowingly use Personal Information from children for any purpose except to deliver the products that are designed to offer family-related or child-related protection Services. If you believe we have collected information from your child in error or have questions or concerns about our practices relating to children, please notify us using the Contact Us details below and we will promptly respond.

Data Transfers
McAfee is headquartered in the United States, and we have operations, entities, and service providers in the United States and throughout the world, including in India. As such, we and our service providers may transfer your personal information to, or access it in, jurisdictions that may not provide equivalent levels of data protection as your home jurisdiction. We will take steps to ensure that your personal information receives an adequate level of protection in the jurisdictions in which we process it. If you are located in the European Economic Area or Switzerland, we provide adequate protection for the transfer of Personal Information to countries outside of the EEA or Switzerland through a series of intercompany agreements based on the Standard Contractual Clauses authorized under the EU Data Protection Directive 95/46/EC.

Links to Other Websites
Our Site may contain links to other websites for your convenience and information. These websites may be operated by companies not affiliated with McAfee. Linked websites may have their own privacy policies or notices, which we strongly suggest you review if you visit those websites. We are not responsible for the content, privacy practices, or use of any websites that are not affiliated with McAfee.

Contact Us
If you have questions or concerns regarding this Privacy Notice, or would like to update information we have about you or your preferences, please contact us by email at privacy@mcafee.com or by one of the following additional methods: In the United States by calling us at +1 972-963-7902 or by writing to us at:
Attn: Legal Department – Privacy Office,
5000 Headquarters Drive, Plano TX 75024
In the European Economic Area by calling us at +44 (0) 1753 217 500 or by writing to us at:
227 Bath Road
Slough, Berkshire
SL1 5PP United Kingdom
In Japan by calling us or by writing to us at:
Personal Information Protection Manager McAfee Co. Ltd.
Shibuya Mark City West,
Dougenzaka 1-12-1,
Shibuya-ku,
Tokyo, 150-0043
Tel: (switchboard) 03-5428-1100

Mobile App Privacy Statement
• What We Collect
• How We Use Your Information
• How We Share Your Information
• Your Choices
• Security
• International Transfers
• Data Retention
• Children and Minors
• Notice to California Residents
• Updates to This Privacy Notice
• Contact Us
Effective Date: April 3, 2017
McAfee, LLC and our affiliates with whom you have a business relationship (“McAfee”, “we”, “us”) respect your privacy. This Mobile App Privacy Statement (“App Privacy Notice”) describes our privacy practices regarding the collection, use, and disclosure of your personal information through our mobile apps (our “app” or “apps”).

1. What We Collect

Information you provide:
We may require that you register to use the apps. Registration may require personal information like your email address and name and information like a unique user name or password. In some cases, you may be able to sign in using your Google or Facebook account credentials which will then be used only for the purpose of account access and account management.

The functionality of the apps may require some access to personal information in order to use the apps. This may include contact information such as your name, address, phone number, email address, and unique log-in credentials. The apps may also access unique numeric identifiers assigned to your device such as your mobile advertising ID/IDFA, Bluetooth device IDs, and mobile device ID.

Other types of information may also be collected by the apps such as:
- IDs of any Bluetooth devices connected to your mobile device
- Media such as photos and videos that you store or consent to give us access to
- Device details such as OS, device ID, and device type
- List of other apps on your device and information about those applications
- Your location
- Details of your McAfee product subscriptions such as products used, registration data, product key, and the like
- Information about websites that you view and visit
- Battery levels, on/off device status

Access to some of the above information (such as your location) may be restricted by your mobile device’s operating system, and your consent will be requested before we may access this information. It is your choice whether you wish to provide consent; however, if you do not provide consent, some functionality of the apps may be restricted.

You may also have the opportunity to voluntarily provide additional information from time to time that is not required by the apps but may improve your experience. Information we collect automatically from your device and apps
In addition to the above information, the apps automatically collect other device-related information and app performance data. This includes crash logs to assess application usability and performance, length of time spent on the apps, and other aggregate or statistical information. Location data may be automatically collected, such as by GPS, for the purpose of providing certain features of the apps. This data is transmitted and stored separately from any personal information processed by the apps and contains no information that can reasonably be used to directly identify you.

2. How We Use Your Information.

In addition to providing and improving the apps and related services, we use your personal information to communicate with you, including to send you notifications and alerts and for in-app advertising and marketing (in accordance with your marketing preferences), to respond to your requests (such as for technical support or customer service), and for research and analytics. In addition to the uses described in this App Privacy Notice, we may use your personal information as otherwise permitted by applicable law.

Some apps may use information about the websites you visit and the apps installed on your device to show you more relevant ads. When we do this, we will provide you notice of these activities and the opportunity to opt out.

3. How We Share Your Information.

THIRD-PARTY SERVICE PROVIDERS AND AFFILIATED COMPANIES

Other than as described in this App Privacy Notice, we do not sell, rent, or share information that identifies you personally like your name, email address, phone number, or address. We may need to share the information we collect through the apps with third-party service providers in order to support the apps, their features, and their services, including customer services and technical support, and with our affiliated companies. We may share the advertising identifier assigned to your device along with information about the websites you visit or the apps installed on your device with third-party service providers so that they can use that information to help show you ads that are more likely to be relevant to you.

Some of our users may use your information in a format that does not directly identify you for their own business purposes (such as to improve their own services). For example, they may track the number of customer support calls required before an issue is resolved in order to improve resolution time. Our contracts do not permit our third-party service providers to use your personal information in ways that are inconsistent with this App Privacy Notice.

THIRD-PARTY SERVICE PROVIDER TERMS

Some of our third-party service providers may have additional terms and choices that apply to your information which we are required to make available to you as follows:
Google Maps: If the app uses Google Maps’ API, it is governed by Google’s Privacy Policy. Certain Maps API(s) store and access cookies and other information on end-users’ devices.

The Facebook Audience Network: We are a member of the Facebook Audience Network. This provides a way for companies to display their ads to Facebook users in apps and websites that are also part of the network. Facebook helps tailor the ads so that they are relevant and useful. You can use Facebook’s ad preferences tool to view, add, and remove your preferences, including whether you receive these tailored ads, including in our apps. We encourage you to review Facebook’s data policy and privacy basics. Ads in our apps may also include an Ad Choices opt-out icon so you can opt out directly from our app.

OTHER WAYS YOUR PERSONAL INFORMATION MAY BE SHARED

Your personal information may also be used and shared with independent third parties, government representatives, or others if required by law, in connection with a sale purchase, merger, or reorganization, or when we believe it is necessary to protect our rights, property, or safety, to comply with a judicial proceeding, court order, or legal process—such as evidence in litigation in which we are involved. In the case of a sale or purchase we will instruct the entities to which we transfer your personal information only to use it in a manner consistent with this App Privacy Notice.

4. Your Choices.

You may request access to view, modify, update or remove the personal information that we have related to your use of the apps by contacting us using the details supplied in the “Contact Us” section below. You can unsubscribe from our marketing-related messages at any time by following the unsubscribe instructions included within each marketing-related message sent to you or by using the details in the “Contact Us” section. We
will comply with requests within the time frames required by applicable law. Please note that if you choose not to receive marketing-related emails from us, we may still send you important administrative and transactional messages related to the apps and services (“service notifications”). You may have the option to limit the use of information about your device for purposes of serving ads that are targeted to your interests through your device settings (called “Limit Ad Tracking” on iOS devices and “Opt Out of Interest-Based Advertising” on Android devices).

We take reasonable technical, administrative, and physical measures to protect the personal information provided, but you must understand that no app or internet transmission can ever be guaranteed 100% secure. Where personal data collected is stored on your device, security is through your device’s own secure storage facilities. You should also take care to protect the secrecy of your account user name and password and to protect the personal information that is stored on your device.

We are a U.S.-based, global company. As such, we may transfer, store, and process your personal information in the United States (U.S.) or to any of our group companies worldwide when processing that information for the purposes described in this App Privacy Notice. We may also transfer your personal information to our third-party service providers, who may be located in a different country than you. Personal information collected by us from the European Economic Area and Switzerland is protected in accordance with applicable legal requirements implemented through intra-group agreements incorporating the standard model contractual clauses recognized by the Directive 95/46/EC of the European Parliament and the Council, also known as the Data Protection Directive (“the Directive”).

7. Data Retention.
We retain account information, such as your name, account credentials, and email for the lifetime of your account. However, if you are not an active user of the app (as determined by number of log-in attempts) your account and all data will be deleted after a reasonable period of time. If your data is deleted, you may have to establish a new account to begin using the app again. In some products, data may be stored locally on your device as well as remotely on our (or our service provider’s) systems. Generally, if you delete the apps on your device, any data stored locally on the device will be deleted; however, data on servers elsewhere may remain. You can request that we delete your personally identifiable information on our app servers by sending a written request to us as instructed in the Contact Us section below. Your request must provide your name, any app-specific user ID, email address, and the name of any apps subject to your request. We will retain these communications for our record keeping purposes.

8. Use of Services by Minors.
We comply with the Children’s Online Privacy Protection Act of the United States and similar laws around the world where applicable to our products and services. We do not knowingly collect personal information from children without proper parental consent. If you believe that we may have improperly collected personal information from someone under the applicable age of consent in your country, please let us know using the methods described in the Contact Us section and we will take appropriate measures to investigate and address the issue promptly.

Section 1798.83 of the California Civil Code requires us to tell you that we do not share your personal information with third parties for their direct marketing purposes.

10. Updates to this App Privacy Notice.
From time to time we may update this App Privacy Notice and/or our Privacy Notice for legal, regulatory, or business reasons. Any such changes will presented for review and will be agreed to by both parties in writing.

11. Contact Us.
If you have questions or concerns about our privacy practices, you can send a letter to the postal address listed below. To help us most effectively respond to your query, please include your contact information, name of the Service or website, and a detailed description of your request or privacy concern.
McAfee LLC
Attn: Legal Department – Privacy Office
5000 Headquarters Drive, Plano TX 75024
• Email: privacy@mcafee.com
• Telephone: +1 972-963-7902
If you are located in the European Economic Area, please write to:
227 Bath Road
Slough, Berkshire
SL1 5PP United Kingdom
Telephone: +44 (0) 1753 217 500 Email: privacy@mcafee.com
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
MICRO FOCUS GOVERNMENT SOLUTIONS LLC

END USER LICENSE AGREEMENT – ENTERPRISE VERSION

1. APPLICABILITY. This end user license agreement (the “Agreement”) governs the use of accompanying software, unless it is subject to a separate agreement between Ordering Activity under GSA Schedule contracts (“you” or “Ordering Activity”) and Micro Focus LLC and its subsidiaries (“Micro Focus”). By downloading, copying, or using the software you agree to this Agreement. By both parties executing this Agreement in writing, you agree to this Agreement.

2. TERMS. This Agreement includes attached supporting material, which may be software license information, additional license authorizations, software specifications, published warranties, supplier terms, open source software licenses and similar content (“Supporting Material”). Nothing herein shall bind the Ordering Activity to any Supporting Material terms unless the terms are provided for review and agreed to in writing by all parties.

3. AUTHORIZATION. If you agree to this Agreement on behalf of another person or entity, you warrant you have authority to do so.

4. CONSUMER RIGHTS. If you obtained software as a consumer, nothing in this Agreement affects your statutory rights.

5. ELECTRONIC DELIVERY. Micro Focus may elect to deliver software and related software product or license information by electronic transmission or download.

6. LICENSE GRANT. If you abide by this Agreement, Micro Focus grants you a non-exclusive nontransferable license to use one copy of the version or release of the accompanying software for your internal purposes only, and is subject to any specific software licensing information that is in the software product or its Supporting Material.

Your use is subject to the following restrictions, unless specifically allowed in Supporting Material:

- You may not use software to provide services to third parties.
- You may not make copies and distribute, resell or sublicense software to third parties.
- You may not download and use patches, enhancements, bug fixes, or similar updates unless you have a license to the underlying software. However, such license doesn’t automatically give you a right to receive such updates and Micro Focus reserves the right to make such updates only available to customers with support contracts.
- You may not copy software or make it available on a public or external distributed network.
- You may not allow access on an intranet unless it is restricted to authorized users.
- You may make one copy of the software for archival purposes or when it is an essential step in authorized use.
- You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software. If you have a mandatory right to do so under statute, you must inform Micro Focus in writing about such modifications.

7. REMOTE MONITORING. Some software may require keys or other technical protection measures and Micro Focus may monitor your compliance with the Agreement, remotely or otherwise. If Micro Focus makes a license management program for recording and reporting license usage information, you will use such program no later than 180 days from the date it’s made available.

8. OWNERSHIP. No transfer of ownership of any intellectual property will occur under this Agreement.

9. COPYRIGHT NOTICES. You must reproduce copyright notices on software and documentation for authorized copies.

10. OPERATING SYSTEMS. Operating system software may only be used on approved hardware and configurations.

11. 90-day Limited Warranty for Micro Focus Software.

Micro Focus -branded software materially conforms to its specifications, if any, and is free of malware at the time of delivery; if you notify Micro Focus within 90 days of delivery of non-conformance to this warranty, Micro Focus will replace your copy. This Agreement states all remedies for warranty claims. Micro Focus does not warrant that the operation of software will be uninterrupted or error free, or that software will operate in hardware and software combinations other than as authorized by Micro Focus in Supporting Material. To the extent permitted by law, Micro Focus disclaims all other warranties.

12. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT. Micro Focus will defend and/or settle any claims against you that allege that Micro Focus -branded software as supplied under this Agreement infringes the intellectual property rights of a third party. Micro Focus will rely on your prompt notification of the claim and cooperation with our defense. Micro Focus may modify the software so as to be noninfringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to you the amount paid for the affected product in the first year or the depreciated value thereafter. Micro Focus is not responsible for claims resulting from any unauthorized use of the software. Nothing
LIMITATION OF LIABILITY. Micro Focus’s liability to you under this Agreement is limited to the amount actually paid by you to Micro Focus for the relevant software, except for amounts in Section 12 ("Intellectual Property Rights Infringement"). Neither you nor Micro Focus will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by applicable law.

TERMINATION. This Agreement is effective until terminated or in the case of a limited-term license, upon expiration; however When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Micro Focus shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Immediately upon termination or expiration, you will destroy the software and documentation and any copies, or return them to Micro Focus. You may keep one copy of software and documentation for archival purposes. We may ask you to certify in writing you have complied with this section. Warranty disclaimers, the limitation of liability, this section on termination, and Section 15 ("General") will survive termination.

GENERAL.

a. Assignment. You may not assign this Agreement without prior written consent of Micro Focus, payment of transfer fees and compliance with Micro Focus’s software license transfer policies. Authorized assignments will terminate your license to the software and you must deliver software and documentation and copies thereof to the assignee. The assignee will agree in writing to this Agreement. You may only transfer firmware if you transfer associated hardware. Micro Focus is also prohibited from assigning this Agreement without prior written consent.

b. U.S. Government. If the software is licensed to you for use in the performance of a U.S. Government prime contract or subcontract, you agree that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under Micro Focus’s standard commercial license.

c. Global Trade Compliance. You agree to comply with the trade-related laws and regulations of the U.S. and other national governments. If you export, import or otherwise transfer products provided under this Agreement, you will be responsible for obtaining any required export or import authorizations. You confirm that you are not located in a country that is subject to trade control sanctions (currently Cuba, Iran, N. Korea, N. Sudan, and Syria) and further agree that you will not retransfer the products to any such country.

d. Audit. Micro Focus may audit you for compliance with the software license terms. Upon reasonable notice, and subject to Government security requirements, Micro Focus may conduct an audit during normal business hours (with the auditor’s costs being at Micro Focus’s expense). If an audit reveals underpayments then you will pay to Micro Focus such underpayments within thirty (30) days of the invoice receipt date.

e. Open Source Components. Nothing herein shall bind the Ordering Activity to any Open Source License terms unless the terms are provided for review and agreed to in writing by all parties. To the extent Supporting Material includes the GNU General Public License or the GNU Lesser General Public License: (a) the software includes a copy of the source code; or (b) if you downloaded the software from a website, a copy of the source code is available on the same website; or (c) if you send Micro Focus written notice, Micro Focus will send you a copy of the source code for a reasonable fee.

f. Notices. Written notices under this Agreement may be provided to Micro Focus via the method provided in the Supporting Material.

g. Governing Law. This Agreement will be governed by the Federal laws of the United States. You and Micro Focus agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

h. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

i. Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. If Micro Focus doesn’t exercise its rights under this Agreement, such delay is not a waiver of its rights.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Vendor shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government’s prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.
MariaDB Subscription Services
MariaDB Subscription customers have access to technical support services including Problem Resolution Support, Engineering Support, Consultative Support, Remote Login Support, and Telephone Support for the MariaDB platform (MariaDB server, MariaDB TX for transactions, MariaDB AX for analytics, MariaDB MaxScale, and related products like storage engines) via the Customer Support Portal.

Each designated technical contact will receive a Customer Support Portal login (based on the associated email address) that can be used to report new support issues, monitor ongoing issues, or review historical issues. Information regarding making changes to technical contacts can be found in the “Welcome Letter” provided after signup, and is also available in the “Contact Us” section of the Customer Support Portal. If you have issues initially logging into the Customer Support Portal, you will be prompted to email success@mariadb.com for further assistance.

If Remote DBA services are purchased, an on-boarding call is scheduled to gather the necessary information for the MariaDB Remote DBA team to remotely access supported products. Information about the architecture, operating systems, database server versions, backup schedules, etc will also be documented during this call. Once the required information has been collected, monitoring software will be installed and setup to alert MariaDB Corporation. Certain alerts such as server availability, replication health, and others will be configured to open issues automatically in the Customer Support Portal.

All services are delivered in English. MariaDB Corporation will use reasonable efforts to provide technical support in languages other than English using MariaDB Corporation’s available personnel via voice calls and in-person meetings, but may not have such resources available at all or at the time of the support request. All communication via the Customer Support Portal should remain in English. There are no Service Level Agreements for non-English support at this time.

### Subscriber Service | Support (TX/AX) | Remote DBA
--- | --- | ---
Problem Resolution Support | ✓ | ✓
Engineering Support | ✓ | ✓
Consultative Support | ✓ | ✓
Remote Login Support (Remote DBA) | | ✓
Telephone Support (escalation for callback) | ✓ | ✓
Real-time Chat Support (Slack) | | ✓

**Problem Resolution Support**

The focus of Problem Resolution Support is helping to restore service (due to outages caused by crashes, replication failures, table corruption, etc.), and assisting with command syntax, installation, configuration, upgrades, and other general product usage topics.

**Engineering Support**

Engineering Support can include bug fixes, patches, hotfixes, and topics that require communication with and/or escalations to the product engineering teams. Hot fixes are provided to address critical failures and may not receive the full QA and regression testing performed on regular maintenance releases due to the urgent nature of the situation.

Custom feature development (Non-Recurring Engineering) is a separate service and is not included in Engineering Support. Engineering Support is available on those platforms for which we or our partners produce supported product binaries, subject to the relevant Maintenance and Lifecycle policies for the specific product and platform. Engineering Support is unavailable for products or platforms that have reached their maintenance end of life. MariaDB Corporation Engineering Policies. For other products, please see the respective vendor’s website.

**Consultative Support**
Consultative Support covers issues that are specific to a customer’s deployment, such as performance tuning, best practice recommendations, and basic code reviews, rather than general product usage, service failures, or software defects. MariaDB Remote DBA is a separate service and is not included in Consultative Support. At the discretion of the assigned MariaDB Subscription Services Engineer, long running consultative support tasks (ie: greater than 2 hours) may be referred to MariaDB Professional Services.

Consultative Support is intended for narrow, specific topics and is not a replacement for a dedicated, on-site or remote consulting engagement to address systemic, architectural, or wide-ranging subjects. The MariaDB Subscription Services Engineer will provide assistance resolving performance problems caused by server configuration, poorly performing queries, table definitions, indexing strategies, storage engines, and more, suggesting changes and identifying alternative implementations suited to a particular environment.

MariaDB Subscription Services Engineers can review source code to assist with following best practices and ensuring code correctness regarding the various client APIs, stored procedures and server extensions, recommending changes as necessary to support particular needs.

Remote Login Support (Remote DBA)

A MariaDB Remote DBA subscription provides remote login support as well as the following services listed below. The main distinguisher between AX/TX Support and AX/TX Remote DBA is that the Remote DBA has the ability to log into your environment and do the work for you. AX/TX Support (non RDBA) will walk you through the needed resolution steps via communication within the Customer Support Portal through the support ticket which you have raised.

<table>
<thead>
<tr>
<th>Standard Subscription</th>
<th>Platinum Subscription</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installation of monitoring and alerting solution</td>
<td>✓</td>
</tr>
<tr>
<td>Real-time chat service</td>
<td>✓</td>
</tr>
<tr>
<td>Telephone support as necessary (limitations apply)</td>
<td>✓</td>
</tr>
<tr>
<td>Initial environment and configuration review</td>
<td>✓</td>
</tr>
<tr>
<td>Database configuration recommendations</td>
<td>✓</td>
</tr>
<tr>
<td>Backup configuration and monitoring (limitations apply)</td>
<td>✓</td>
</tr>
<tr>
<td>Review and recommend best practices</td>
<td>✓</td>
</tr>
<tr>
<td>Database recovery assistance</td>
<td>✓</td>
</tr>
<tr>
<td>Backup verification via automatic restore (limitations apply)</td>
<td>✓</td>
</tr>
<tr>
<td>Replication setup, configuration, and repair</td>
<td>✓</td>
</tr>
<tr>
<td>Schema changes and migrations</td>
<td>✓</td>
</tr>
<tr>
<td>Query optimization and tuning assistance</td>
<td>✓</td>
</tr>
</tbody>
</table>

Quarterly upgrades of MariaDB Server (limitations apply)✓
Quarterly security and performance audits as requested✓
Semi-annual architecture review as requested✓
Other database administration–related tasks as agreed✓

Connectivity The MariaDB Remote DBA team prefers the use of SSH jump boxes. The use of a VPN is also acceptable. Screen sharing applications such as WebEx are not acceptable for Remote DBA offerings.

Server and Database Accounts It is preferred to have one vendor account for server and database access (and VPN if required). However, certain security regulations may prevent this (PCI, HIPAA, etc). In those circumstances, individual accounts for each Remote DBA will be necessary. The customer is responsible for timely creation of accounts for Remote DBAs. No SLAs or 24x7 coverage can be guaranteed for customers requiring individual logins. Additionally, the use of SSH keys and/or two-factor authentication (Authy, Google Authenticator, RSA SecurID, etc) is highly recommended.

Monitoring and Administration Tools The MariaDB Remote DBA team requires a server within the customer’s infrastructure for monitoring and other utilities. This can be the same server as the SSH jumpbox.

Geographical Restrictions If a customer has a geographical restriction (only MariaDB Remote DBAs from US, EU, etc), then business hours coverage only.

Telephone Support For S1 emergency production outages, customers may request that a MariaDB Subscription Services Engineer make contact by telephone. Resolving technical issues generally requires analysis of system logs and other data that must be transmitted via email and file attachments to the support issue rather than by telephone. Including this information when reporting the support issue dramatically hastens the process of resolving the problem and restoring production functionality.

ISSUE SEVERITY AND SERVICE LEVEL AGREEMENTS All issues are assigned a severity level (S1–S4) reflecting the impact to production operations. This is set initially by the technical contact when reporting a new issue via the Customer Support Portal, and MariaDB Subscription Services Engineers will help to ensure that the issue receives an appropriate rating. Each severity level has a corresponding Service Level Agreement (SLA).

<table>
<thead>
<tr>
<th>Severity</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>S1</td>
<td>Catastrophic problem that severely impacts the ability to conduct business. This means that production systems are down (completely non-responsive or not functioning) and no known workaround exists.</td>
<td>30 minutes 24x7</td>
</tr>
<tr>
<td>S2</td>
<td>High impact problem in which production operations are disrupted but remain somewhat productive or have an available workaround.</td>
<td>2 hours 24x5</td>
</tr>
<tr>
<td>S3</td>
<td>Medium or lower impact problem that involves partial loss of non-critical functionality. This may be a minor issue with limited or no loss of functionality or impact to production operations. This includes administrative requests and errors in product documentation.</td>
<td>4 hours 24x5</td>
</tr>
<tr>
<td>S4</td>
<td>Low level problem that does not significantly affect system function or operations. This includes new feature requests.</td>
<td>8 hours 24x5</td>
</tr>
</tbody>
</table>

In exceptional situations, MariaDB Subscription Services may elect to assign an S1 or S2 Severity level for failures on non-production systems based on the overall business impact. MariaDB Subscription Services may change the severity of an issue based on the guidelines above at the discretion of the assigned MariaDB Subscription Services Engineer.

ESCALATION REQUESTS Customers may request escalation of a specific support issue directly within the Customer Support Portal by clicking the Escalate Issue link at the top of any issue details page, then selecting the type of escalation and supplying other relevant information. Available escalations include:
- Emergency Callbacks for S1 emergency production outages
- Higher Priority Handling when an issue has become more serious than reported
- Engineer in Different Timezone

**SUPPORTED PRODUCTS**

<table>
<thead>
<tr>
<th>Product</th>
<th>MariaDB TX</th>
<th>MariaDB TX Cluster</th>
<th>MariaDB AX</th>
<th>Add-on</th>
</tr>
</thead>
<tbody>
<tr>
<td>MariaDB Server</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB Cluster with Galera</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB MaxScale</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB ColumnStore</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB Backup</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB Client Library for C</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB Client Library for JDBC</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB Client Library for ODBC</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB Audit Plugin</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB PAM Authentication Plugin</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB Monitoring</td>
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<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB Admin</td>
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<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Eperi Key Management Plugin</td>
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<td></td>
<td>✓</td>
<td></td>
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<tr>
<td>Amazon Key Management Plugin</td>
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<td></td>
</tr>
<tr>
<td>Severalnines ClusterControl Enterprise</td>
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<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Spider Storage Engine (10.3+)</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MyRocks Storage Engine (10.3+)</td>
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<td></td>
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</table>
### Supported Storage Engines

<table>
<thead>
<tr>
<th>Storage Engine</th>
<th>5.5</th>
<th>10.0</th>
<th>10.1</th>
<th>10.2</th>
<th>10.3</th>
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<tbody>
<tr>
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<td>Blackhole</td>
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<td>InnoDB</td>
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<td>Memory</td>
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<tr>
<td>MyRocks</td>
<td>✓</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Spider</td>
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<tr>
<td>XtraDB</td>
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### Supported Plugins

<table>
<thead>
<tr>
<th>Storage Engine</th>
<th>5.5</th>
<th>10.0</th>
<th>10.1</th>
<th>10.2</th>
<th>10.3</th>
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<tr>
<td>Audit Plugin</td>
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<tr>
<td>AWS Key Management</td>
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<tr>
<td>Client Statistics</td>
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<tr>
<td>Cracklib Password Check</td>
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<tr>
<td>Dialog</td>
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<td>ed25519</td>
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<td>Feedback</td>
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<tr>
<td>GSSAPI Authentication</td>
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<td>Index Statistics</td>
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<td>Metadata Lock Info</td>
<td>✓</td>
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<tr>
<td>MySQL Clear Password</td>
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<td>Named Pipe</td>
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<td>PAM Auth</td>
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<tr>
<td>Query Cache Information</td>
<td>✓</td>
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<tr>
<td>Query Response Time</td>
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<tr>
<td>Semisync</td>
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<tr>
<td>Sequence</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Simple Password Check</td>
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<td>✓</td>
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<tr>
<td>SQL Error Log</td>
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<tr>
<td>Table Statistics</td>
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<tr>
<td>Unix Socket Auth</td>
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<td>User Statistics</td>
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<td></td>
</tr>
</tbody>
</table>

Additional Information

Contact Sales for more information regarding available MariaDB Subscription Services.

Consulting services and commercially reasonable “best effort” Support services for additional products and technologies may be delivered at MariaDB Corporation's discretion.

The overall level of support available for a particular product and platform combination may vary from version to version.

Support for legacy versions of products that no longer receive Engineering Support may require an additional fee. Contact Sales for more information regarding support for legacy products.

Support for issues specific to a platform that lacks Engineering Support may be limited to problems that can be reproduced on a platform that has Engineering Support. Examples include those platforms that have reached their maintenance end of life (such as RHEL 3 and Windows 2000 Server), and platforms for which we or our partners do not produce supported product binaries (such as FreeBSD).

MariaDB Subscription Services are not available for products on the POWER platform. MariaDB Corporation will make every commercially reasonable effort to work with other product and platform vendors to resolve issues affecting our supported products.

**Licenses used by MariaDB**

MariaDB is distributed under the [GPL license](https://www.gnu.org/licenses/gpl-2.0.html), version 2.

The MariaDB client libraries for C, Java and ODBC are distributed under the LGPL license, version 2.1 or later. The LGPL license allows you to distribute these MariaDB client libraries freely with any application.

The MariaDB client library included with the MariaDB server is also GPL version 2, but has a [FLOSS exception](https://www.gnu.org/software/libregression/flc.html) that allows you to combine it with most other open source software, without conflicting with their license, even if that license is incompatible with the GPL. We do however recommend you to use the new client libraries for any non-GPL application.

**Internal usage is free**

The GPL license only affects code that you distribute to other parties. Internal usage within an organization is totally free and not subject to any conditions. There is no such thing as 'internal distribution' that would restrict the usage of your code by requiring it to be GPLed.

Connecting to a remote service that runs MariaDB (or any other GPL software) in the background is also free.
For internal programs for which you own all the copyright(s), there is essentially no risk in using GPL software. The argument you can use in your defense is that if the software became GPL as part of the distribution, you as the copyright holder could immediately revert your part back to its original copyright. No one has the right to require you to reveal or redistribute your code to the outside of your organization even if you would have distributed it internally linked with GPL software!

If your lawyers are concerned about distributions of software linked with GPL libraries between different legal entities within your organization, you can solve this by distributing your components and the GPL software separately, and have your other entity combining them. You can also switch to use the new LGPL client libraries.

**Distributing an application with a MariaDB connector/client**

This section is for those that want to distribute the MariaDB client library code, but not the server, with their applications.

**Free software/open source applications**

If your application is Free software/open source and uses one of the licenses listed in the **FLOSS exception**, the GPL in the client library does not affect your application.

In other cases we recommend you to use the new **LGPL Client libraries**.

**Using a connector that is not GPL**

If you are using a connector that is not GPL, you are only bound by the license of that connector. Some examples are:

- MySQL native driver for PHP - mysqli
- ruby-mysql
- LGPL client libraries or C, Java and ODBC

The above have licenses that allow you to use them freely, without you being bound by the GPL.

**Using a database source independent framework**

If you are using a framework that allows you to connect dynamically to different RDBMS systems, any GPL licensed module loaded by the framework will not affect the application. Such frameworks are

- ODBC (Open Database Connectivity)
- JDBC (Java Database connectivity)
- Perl
- PHP PDO MySQL driver

The reason the GPL in the MySQL client library would not affect your application in this case is that the GPL client is supporting a standard interface and is thus merely an optional component among many. Your application could just as easily use the framework to connect to a RDBMS other than MariaDB or MySQL.

Any software can be connected to the GPL v2 licensed MySQL Connector/ODBC, without the need for that software to be GPLed. This is because there is a piece of general management software, the ODBC manager, between the GPLed MySQL Connector/ODBC and your software. If any logic would require the software which interfaces with MySQL Connector/ODBC to be GPL, then that would apply also to the ODBC manager itself. Yet, the ODBC manager is not GPL, neither on Windows nor on Linux. By consequence, no one would be allowed to use MySQL ODBC driver for anything.

**Using the MariaDB client library for C**

If your application is using a license that is not covered by the **FLOSS exception**, then you should use the new **LGPL client libraries or C**.

The LGPL license allows you to distribute these MariaDB client library freely with any application. If you modify the client library, you need to publish the new source code.

**Distributing a proprietary application with the MariaDB / MySQL server**

When you are distributing your application together with MariaDB or MySQL you are bound (or can be seen to be bound by some lawyers) by the GPL if some of the following statements apply:

- You are using GPL code from MySQL linked directly to your application. (Like the MySQL GPL client library).
- Your application requires the MariaDB server to work and without the MariaDB server it doesn't start or it has very limited functionality.

The problem with the client library can be avoided by using one of the solutions mentioned earlier.

If your application works with many databases, either natively or by using one of the **database source independent frameworks**, then you can freely distribute the MariaDB server with your application without being affected by the GPL. The reason for this is that MariaDB would only be an optional, independent component in your software distribution and section 2 of the GPL explicitly allows this:

"In addition, mere aggregation of another work not based on the Program with the Program (or with a work based on the Program) on a volume of a storage or distribution medium does not bring the other work under the scope of this License."

Nothing herein shall bind the Ordering Activity under GSA Schedule Contracts to any GPL license, LGPL license, or any other Third Party terms unless the terms are provided for review and agreed to in writing by all parties. You also have the option to buy licenses for MySQL from Oracle to get MySQL under other copyright terms. If you would like to later be able to use MariaDB instead of MySQL, please ensure that your license agreement allows you to make changes to the MySQL code! (This is something that you should ensure in all cases as otherwise you may run into bugs that Oracle will not fix, you are not allowed to fix and could make MySQL software unusable for you!)

The rights to use the MariaDB code changes in your application can be requested from **SkySQL**.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Mellanox Technologies, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agree that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the
FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A – Mellanox Technologies**

1. **General**

Each copy of the Software is intended for use only in conjunction with Mellanox’s managed switch products (“Mellanox Products”) and is subject to the terms of this Agreement.

2. **Grant of License**

Subject to the terms and conditions of this Agreement, the GSA schedule contract, schedule pricelist and applicable purchase order, Mellanox grants Ordering Activity a personal, non-exclusive, non-transferable license to use the Software in binary form for Ordering Activity’s internal business purposes solely in connection with Mellanox Products and not for further distribution.

2.1. **Archive.** Ordering Activity may use software back-up utilities to make one back-up copy of the Software. Ordering Activity may use the back-up copy solely for archival purposes.

3. **Restrictions**

Except as expressly authorized herein, Ordering Activity is prohibited from and shall not cause or permit any:

1. copying or modification of the Software; (2) creating derivative works based on all or any portion of the Software; (3) removal or modification of any notice of any patent, copyright, trademark or other proprietary rights that appear on or in the Software; (4) reverse engineering, decompilation, translation, disassembly or discovery of the source code of all or any portion of the Software; (5) distribution, disclosure, marketing, leasing, reselling, assigning, loaning, sublicensing, renting or transferring to any third party, including Ordering Activity’s end user customers, of the Software, or (6) merging of the Software into another product; or (7) disclosure to any third party of the results of any testing or performance benchmarks of the Software or other MELLANOX product without MELLANOX’S prior written consent.

4. **LIMITED WARRANTY**

4.1 **Performance Warranty.** Mellanox warrants to Ordering Activity that for a period of one (1) year from the date of shipment, the Products as delivered will conform in all material respects to the Product specifications in effect at the time of shipment. Ordering Activity may notify Mellanox in writing of any material nonconformance during the warranty period. Mellanox reserves the right to examine any allegedly non-conforming Product and perform a failure analysis to determine if the alleged non-conformance is a result of defective materials or workmanship (in which case the remedies set forth in this limited warranty section shall apply), or does not exist or was caused by improper use or installation or damage in transit or while in the control of Ordering Activity (in which case
Ordering Activity shall have no right to any remedies hereunder. If Mellanox determines that the non-conformance was due to defective materials or workmanship, Mellanox will issue a return authorization (RMA) for the nonconforming products, and Ordering Activity will return the nonconforming unit(s) to Mellanox' designated repair facility in accordance with the instructions set forth in the RMA. Mellanox shall, at its option, either (i) repair or replace nonconforming products, at Mellanox’ cost, and return the conforming products to Ordering Activity, or (ii) credit Ordering Activity for any non-conforming products. Any such repair or replacement provided to Ordering Activity will not extend the original warranty period for the products in question. The foregoing sets forth Mellanox’ sole and exclusive obligation and Ordering Activity’s sole and exclusive remedy for any breach of the foregoing warranty. Ordering Activity shall bear all risk of loss or damage to returned goods while in transit. In the event no defect or breach of warranty is discovered by Mellanox upon receipt of any returned item, the item will be returned to Ordering Activity at Ordering Activity’s expense and Ordering Activity will reimburse Mellanox for the transportation charges, labor, and associated charges incurred in testing the allegedly defective Product.

42 Exceptions. Notwithstanding the foregoing, evaluation board Products and expedited units from the first three wafer lots are purchased AS IS, without any warranty of any kind and are non-cancelable and non-returnable.

43 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN THE ABOVE SUB-SECTION (a), MELLANOX AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS, ALL FIRMWARE AND ANY SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

44 Unintended Applications. Unless specifically otherwise agreed in writing by Mellanox, Ordering Activity acknowledges that products sold by Mellanox are not intended for use in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Without limiting sub-section (c) above, Mellanox provides no warranty to Ordering Activity related to such non-authorized uses. Without limiting the foregoing, the Software provided under this Agreement may be distributed with certain freeware, open source or other third party components (“Open Source Software”) which, if included, are provided pursuant to the terms of the applicable Open Source License governing its use and distribution. Please see the links provided in the Third Party Free Software Rights Notice for such Open Source License terms. MELLANOX THEREFORE PROVIDES SUCH OPEN SOURCE SOFTWARE ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER AND HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ANY OPEN SOURCE SOFTWARE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT; AND (B) ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN WHERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Limitation of Liability

IN NO EVENT SHALL MELLANOX BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR ANY OTHER INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, NEGLIGENCE OR ANY OTHER PECUNIARY LOSS HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING FROM THE USE OF, OR INABILITY TO USE, THE SOFTWARE OR RELATED COMPONENTS OR DOCUMENTATION, EVEN IF MELLANOX OR ITS SUPPLIERS, RESELLERS, OR DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, IN NO EVENT WILL MELLANOX’S TOTAL LIABILITY HEREUNDER, INCLUDING FOR DIRECT DAMAGES, EXCEED THE AMOUNT OF FEES PAID BY END USER UNDER THE ORDER GIVING RISE TO SUCH LIABILITY, AND IF SUCH CLAIMS RELATE TO PARTICULAR PRODUCTS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE RELEVANT PRODUCTS OR SERVICES GIVING RISE TO THE LIABILITY.

6. Qualifications and Limitations Basis of Bargain

The limited warranty, exclusive remedies and limited liability provisions set forth herein are fundamental elements of the basis of the Agreement between Mellanox and Ordering Activity, and Ordering Activity accepts and confirms that Mellanox would not be able to provide the Software Product on an economic basis without such limitations.

7. Reserved

8. Title; Trademarks

8.1 Except as specifically permitted herein, no portion of the Software Product, including but not limited to object code and source code and the printed materials accompanying the Software Product, may be reproduced, modified, distributed, republished or otherwise exploited in an form or by any means for any purpose without the prior written permission of Mellanox.

8.2 Subject to section 8.4 below, all rights and title in and to the Software Product, and any change, enhancement, addition, correction, modification and/or derivative work of the Software Product, whether made by Mellanox or by Ordering Activity, are owned exclusively by Mellanox, provided that Ordering Activity has a personal, non-exclusive, non-transferable license to use said change, enhancement, addition, correction, modification and/or derivative works of the Software Product for Ordering Activity’s internal business purposes. The Software Product is protected by copyright laws and international treaty provisions.

8.3 The name Mellanox, SwitchX, MLNX-OS and all other trademarks, service marks, trade names, and logos of Mellanox are owned by Mellanox, and may not be used in connection with any product or service that is not Mellanox’ without the prior written consent of Mellanox. All other trademarks, service marks, trade names, or logos cited herein are the property of their respective owners.

8.4 This Software Product operates or interfaces with certain third party free software programs, the details, and the limitations applying to the use, of which, are set forth in the “Third Party Free Software Rights Notice” attached hereto. If Ordering Activity wishes to obtain source code pursuant to GPL or LGPL licenses for the items listed in the attached, please contact Mellanox at the address detailed at: http://www.mellanox.com/content/pages.php?pg=support_index.

9. OWNERSHIP

MELLANOX retains all title, ownership, interests and intellectual property rights in and to the Software and deems the Software to be confidential information. To the extent the Software contains any materials licensed from third parties, third party suppliers may own such licensed materials. MELLANOX retains all rights not expressly granted to Ordering Activity in this Agreement. Ordering Activity agrees to protect and maintain the confidentiality of the Software, and not to disclose the Software to any third parties except as expressly permitted in this Agreement. Ordering Activity further acknowledges that Ordering Activity is acquiring only
a limited license to use the Software and not any title to or ownership of the Software or any part thereof and that the Software is proprietary to and copyrighted by MELLANOX. MELLANOX SOFTWARE IS COPYRIGHTED AND LICENSED, NOT SOLD.

10. PRODUCT SUPPORT

Product support for the Software Product is provided by Mellanox or it authorized agents under a separate agreement, in accordance with Mellanox' standard support and maintenance terms and conditions. For product support, please refer to Mellanox support number provided in the documentation.

11. RESERVED

12. Reserved

Mellanox Fabric Switch Management System Software: Third Party Free
Software Rights Notice

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EC AMERICA RIDER TO PRODUCT SPECIFIC LICENSE TERMS AND CONDITIONS
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached MicroStrategy Incorporated (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded.

w) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

x) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be within the contract signed by the Government.

z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

c) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentation of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement ("Agreement") applies to an order entered into between Contractor acting by and through its supplier, MicroStrategy Incorporated ("we," "us," "our") and the eligible Ordering Activity under GSA Schedule contracts identified on the order ("you," "your," or "Ordering Activity"), and specifies the terms and conditions under which we will license and supply Products and Services to you.

I. GENERAL TERMS

The terms of this Section I ("General Terms") apply generally to all Products and Services supplied under this Agreement.

1. Definitions

Unless otherwise defined in this Agreement, capitalized terms used in the body of this Agreement will have the meanings set forth below.

"Applicable Data Protection Law" means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Protected Data, including the European Union Directives and regulations governing general data protection and all applicable industry standards concerning privacy, data protection, confidentiality or information security.

"CPL" means a physical core (in a physical computing environment) or a virtual core (in a virtual computing environment) to which an instance of a Product is assigned, as identified by the operating system in which the Product is installed.

"Customer Content" means software (including machine images), data, text, audio, video, images, or other content of yours or a third-party that you or your Representative utilize with a Product.

"Designated Software Instance," or "DSI" means a single MicroStrategy metadata database or a set of related MicroStrategy metadata databases (e.g., for production, development, testing, etc.) that will be accessed by the Products specified on an order.

"Documentation" means the user documentation or manuals normally distributed or made available in connection with a Product.

"Named User" means any individual designated by you as a user of a Product on a non-temporary basis.

"Product" means a generally available MicroStrategy software product identified on an order that is licensed to you pursuant to the terms of this Agreement, and any tools included with such software product (including, in the case of the "Cloud Platform" version of our Products, the MicroStrategy Cloud provisioning console).

"Protected Data" means any data or information that is subject to regulation under Applicable Data Protection Law.

"Representative" means any of your affiliates, your third-party contractors and anyone else accessing or using a Product or Service on your behalf or through your systems, including any Named Users.

"Service" means any service provided by us pursuant to this Agreement, including technical support, education, and consulting (or any portion thereof).

"Technical Support Services" means the technical support and maintenance Services provided by us according to our then current technical support policy listed at https://www.microstrategy.com/getmedia/2015098-14b2-432d-afa42e14189c492c/COLL-1909-0618-TS-policy-with-GDPR-section_final ("Technical Support Policy") when the Services are purchased. "Third-Party Solution" means any product, service, content or item of a third-party.

"Update" means a later commercial release of a Product made available after you license the Product.

2. Certain Obligations and Restrictions

You are responsible for compliance with this Agreement by your Representatives. You are also responsible for the proper operation of your network and your equipment used to connect to the Products. You and your Representatives will not (a) copy, display, distribute, or otherwise use a Product in any manner or for any purpose not expressly authorized by this Agreement; or (b) create derivative works of or otherwise modify any Product or any portion thereof except as expressly provided in the Documentation; or (c) modify, tamper with or repair any Product; or (d) reverse engineer, decompile or disassemble any Product or such software or the metadata created by a Product or such software, or apply any other process or procedure to derive the source code of any Product or such software; or (e) interfere with or disrupt the integrity or performance of a Product; or (f) attempt to gain unauthorized access to a Product; or (g) access or use any Product in a way intended to avoid incurring fees or exceeding usage limits or quotas; or (h) use a Product to develop any product or service that is in any way competitive with any of our product or service offerings; or (i) make available to any third-party any analysis of the operation of a Product, including any benchmarking results, without our prior written consent; or (j) use any Product to provide time-sharing services, software-as-a-service offering, service bureau services or similar services; or (k) use a Product to store or transmit (1) material in violation of third-party privacy rights; or (2) libelous, or otherwise unlawful or tortious material; or (3) material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual; or (4) viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs.

As required for our performance pursuant to this Agreement and an order, you are also required to (A) provide us with reliable, accurate and complete information; and (B) make decisions and obtain required management approvals in a timely manner; and (C) obtain all consents, approvals and licenses necessary for use of any software, services, data or other items provided by you or on your behalf; and (D) cause your third-party contractors and licensors to cooperate with us.

3. Intellectual Property Ownership

We, our affiliates and our licensors will own all right, title and interest in and to all Products. You will be and remain the owner of all rights, title and interest in and to Customer Content. Each party will own and retain all rights in its trademarks, logos and other brand elements (collectively, "Trademarks"). To the extent a party grants any rights or licenses to its Trademarks to the other party in connection with this Agreement, the other party’s use of such Trademarks will be subject to the reasonable trademark guidelines provided in writing by the party that owns the Trademarks.

4. Limited Warranties and Remedies

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY PRODUCT OR SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, TITLE, SATISFACTORY QUALITY AND NONINFRINGEMENT. WE DO NOT WARRANT AND ARE NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES AND YOUR SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR SERVICES ARE AS PROVIDED BY THE THIRD-PARTY PROVIDER AND NOT BY US.

5. Data Protection

You will not transfer to us or provide us any access to any Protected Data in connection with this Agreement, including Personal Data, Protected Health Information and Personally Identifiable Information (as such terms are defined in Applicable Data Protection Law), except for Protected Data related to your contact persons.

We have implemented appropriate technical, organizational, and security measures designed to safeguard and protect Protected Data provided by you to us and we may access, use and transfer such Protected Data to our affiliates and third parties (including those located outside of the European Economic Area) only for the purposes of fulfilling our obligations and exercising our rights, providing information to you and complying with our legal and auditing requirements.

6. Third-Party Solution Connectors

When you access any Third-Party Solution (including third-party data sources) with connectors included as part of the Products, you agree and acknowledge that (a) you may download content from the servers of the Third-Party Solution provider; and (b) your access to the Third-Party Solution with such connectors will be for the purpose of utilizing the Third-Party Solution in conjunction with the Products; and (c) we are not responsible for interruptions of service caused by the Third-Party Solution provider; and (d) if we have a business relationship with the Third-Party Solution provider, that relationship is subject to termination and cancellation; (e) you may not remove or obscure any patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any output of the Products and (f) you are solely responsible for licensing the use of third-party data sources accessed by our Products.

7. Other Provisions

Our security Products are not designed to manage physical or logical access to facilities or systems where delay in or failure of such access could threaten health or safety, or cause property, environmental or similar damage. You represent that your decision to license a Product is not based on (a) any oral or written comments made by us with respect to functionality or features not currently offered in our latest generally available version of our Products; or (b) any expectation that any additional features or functionality presented as part of a demonstration, beta evaluation or roadmap presentation of a Product may be included in a future update or release of a Product; or (c) demonstrations of any software that is not currently generally available. You further acknowledge that the development, release and timing of any additional features or functionality for the Products remain at our sole discretion. If you deploy our Products or Services as part of an extranet application, you agree to display “Powered by MicroStrategy” or certain other similar trademarks designated by us.

II. ENTERPRISE PLATFORM LICENSE TERMS

The terms of this Section II ("Enterprise Platform License Terms") apply exclusively to the licensing and provision of the “Enterprise Platform" version of our Products. Products licensed under these Enterprise Platform License Terms will be designated for use in an “Enterprise Platform for Windows” or “Enterprise Platform for Linux” operating environment on an order.

1. License Grant. We grant you a non-exclusive, non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our Products identified in an order on servers and workstations in the country to which the Products are delivered; and (b) grant Named Users located anywhere in the world access to the Products (including the Documentation and reports, dashboards, dossiers and other output generated by the Products) in support of your internal business operations, each in accordance with the Documentation and license type(s) and terms specified on an order. We will supply each Product to you by making it available electronically. You may make additional copies of the download files containing the Products for archival purposes.

2. License Type. Your license to a Product will be under a Named User or CPU license type, as specified on an order. Each Named User license to a Product entitles a Named User to access and use that Product in one production environment and up to two non-production environments. Each CPU license to a Product entitles you to assign the Product to a single CPU in one production environment and up to two non-production environments, for use in support of an unspecified number of Named Users.

3. License Duration. The duration of your license to a Product will be for a perpetual or limited term, as specified on an order. Subject to the terms of this Agreement and the applicable order, (a) if a “Perpetual” interval is specified for a Product, you will receive a license to that Product in perpetuity; and (b) if a “Term” interval is specified for a Product, you will receive a license to that Product for a period of 12 months (or another period specified on the order) from the date of delivery of the Product.

4. Deployment Method. You may only install the Products on servers and workstations under your control in your enterprise data center or under the control of your third-party service provider who hosts the Products on your behalf in a public Cloud, and will deploy the Products only in the operating environment specified on the order. If the “Enterprise Platform for Windows” operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order (e.g., Intelligence, Reporter or Identity) solely in a Microsoft Windows environment. If the “Enterprise Platform...
Platform for Linux® operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order solely in a Linux environment.

5. **Additional Limited Warranties and Remedies.** We warrant that (a) for a period of six (6) months from the effective date of an order ("Enterprise Platform Warranty Period"), each Product listed on the order and Updates delivered for the Product during the Enterprise Platform Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (1) the correction of the Product errors that caused the breach of the warranty; or (2) replacement of the Product; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated.

III. CLOUD PLATFORM LICENSE TERMS

The terms of this Section III ("Cloud Platform License Terms") apply exclusively to the licensing and provision of the "Cloud Platform" version of our Products, an optimized version of the MicroStrategy software platform built specifically for deployment in an Amazon Web Services or Microsoft Azure environment through the MicroStrategy Cloud provisioning console. Products licensed under these Cloud Platform License Terms will be designated for use in a "Cloud Platform for AWS" or "Cloud Platform for Azure" operating environment on an order.

1. **License Grant.** We grant you a non-exclusive, non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our Products identified in an order on servers and workstations in the country to which the Products are delivered; and (b) grant Named Users located anywhere in the world access to the Products (including the Documentation and reports, dashboards, dossiers and other output generated by the Products) in support of your internal business operations, each in accordance with the Documentation and license type(s) and terms specified on an order. We will supply each Product to you by making it available electronically. You may make additional copies of the download files containing the Products for archival purposes.

2. **License Type.** Your license to a Product will be under a Named User or CPU license type, as specified on an order. Each Named User license is transferable, subject to the terms and conditions of this Agreement and in accordance with applicable law.

3. **License Duration.** The duration of your license to a Product will be for a perpetual or limited term, as specified on an order. Subject to the terms of this Agreement and the applicable order, (a) if a "Perpetual" interval is specified for a Product, you will receive a license to that Product in perpetuity; and (b) if a "Term" interval is specified for a Product, you will receive a license to that Product for a period of 12 months (or another period specified on the order) from the date of delivery of the Product.

4. **Deployment Method.** You may only install the Products on servers and workstations under the control of your third-party service provider who hosts the Products on your behalf in a public Cloud, and will deploy the Products only in the operating environment specified on the order. If the "Cloud Platform for AWS" operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order (e.g., Intelligence, Reporter or Identity) solely in an Amazon Web Services environment. If the "Cloud Platform for Azure" operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order solely in a Microsoft Azure environment.

5. **Additional Limited Warranties and Remedies.** We warrant that (a) for a period of six (6) months from the effective date of an order ("Cloud Platform Warranty Period"), each Product listed on the order and Updates delivered for the Product during the Cloud Platform Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (1) the correction of the Product errors that caused the breach of the warranty; or (2) replacement of the Product; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated.

IV. SERVICES TERMS

The terms of this Section IV ("Services Terms") apply exclusively to the provision of our Technical Support, Education, and Consulting Services offerings.

1. **Models.** Each type of Service purchased under these Services Terms will be provided under one of the following models.
   (a) Annual Subscription. Services sold under an "Annual Subscription" model will be designated on an order by an "Annual" interval. We will provide these Services to you for a period of twelve (12) months beginning on the effective date of the order, except as otherwise set forth below. Services sold under an "Hourly" model will be designated on an order by a "Project" interval for an estimated number of hours. We will deliver these Services at your request on a time and materials basis during the twelve (12) month period beginning on the effective date of the order; the number of hours actually delivered may vary from the estimated number of hours listed on the order. For clarity, these types of Services are not provided on a fixed-fee basis and we do not guarantee completion of deliverables within a specific number of hours. If the parties anticipate that the hours to be delivered will exceed the estimated hours set forth on the order, we will request your approval to exceed the estimate and will not deliver those excess hours until we receive your approval; such approval may be provided by email or in an executed change order.
   (b) Prepaid Hourly. Services sold under a "Prepaid Hourly" pricing model will be designated on an order by an "Annual" interval for a set number of hours. Prepaid Hourly Services are payable by you in advance. We will deliver these Services at your request on a time and materials basis up to 4 the number of hours stated on the order; hours not requested during the twelve (12) month period beginning on the effective date of the order will expire

2. **Technical Support**
   (a) Levels of Technical Support Offerings. We offer four (4) levels of Technical Support Services – Standard Support, Extended Support, Premier Support and Elite Support – each of which is provided by us in accordance with and described in the Technical Support Policy. We will provide you the level of Technical Support Services specified on an order. Each of these service offerings is provided on an Annual Subscription basis.
   (b) Support Liaisons. You may designate a set number of Support Liaisons (as defined in our Technical Support Policy) for each or your DSIs based on the level of Technical Support Services you purchase. You may also purchase additional Support Liaisons on an Annual Subscription basis.
   (c) Enterprise Support. As part of your Technical Support Services subscription, we will deliver a pre-determined number of hours of “Enterprise Support”
to you annually at your request, as specifically described in the Technical Support Policy. If you would like us to deliver more hours of Enterprise Support than the hours to which you are entitled under your Technical Support Services subscription, you may purchase additional Enterprise Support via an order on a Prepaid Hourly basis.

(d) Additional Technical Support Terms. Each order for perpetual Product licenses will state the fee for Standard Technical Support Services for a period of twelve (12) months commencing on the date of delivery of those Products. Except as otherwise specified on an order, (a) upon expiration of the initial annual subscription term, you have the option to renew Standard Technical Support Services on those Product licenses. Standard Technical Support Services for term licenses is included as part of the term license fee. For each Product license, we will deliver to you, at your request, an Update at no charge as part of a Technical Support Services subscription. Updates will not include new products that we market separately. We warrant that we will not materially decrease the level of Technical Support Services provided during an active subscription to such Technical Support Services.

3. **Education** We offer education and training Services on either an Annual Subscription or Hourly basis, as described below. Education offerings may be purchased via an order or an online credit card purchase. In the case of education offerings purchased online via a credit card, references to an order will be deemed to refer to the online purchase, and references to the “effective date of an order” will be deemed to mean the date of online purchase.

(a) Types of Education Offerings.

(i) Education Passes. Education Passes are sold on an Annual Subscription basis and provide our customers and partners with flexible access to our training materials and courses. Each Education Pass provides a single individual (“Education Pass User”) global access to instructor-led public training classes (virtual or in-person) and self-paced training courses, and includes all applicable certification exam fees. There are two types of Education Passes: an “Education Pass-Architect,” that provides the Education Pass User with unlimited access to all live or on-demand courses and annual certifications specific to Architects and the establishment of an Intelligence Center; and an “Education Pass-Analyst,” that provides the Education Pass User with access to all live or on-demand courses and annual certifications specific to Analysts. We will notify you that your Education Pass subscription is set to expire between thirty (30) and ninety (90) days prior to the expiration of the then-current term. No more than once during an Education Pass subscription term, you may reassign an Education Pass subscription to a new Education Pass User for the remainder of the subscription term if the current Education Pass User has not used the Education Pass to attend any public instructor-led courses or access any self-paced training courses or if the current Education Pass User has terminated employment with you.

(ii) Education Credits. Education Credits are sold on an Annual Subscription basis and are “purchase cards” that organizations can apply to other training, including a la carte courseware for individuals and onsite customer training for groups. Education Credits may not be applied to the purchase of Education Pass subscriptions.

(iii) Education Services. Education Services are sold on an Hourly basis. Under an “Education Services” engagement, we will assist you with customizing and adapting our courseware and training classes to your application standards, data sets, customizations and use cases. You will reimburse us for all reasonable expenses we incur when delivering these Education Services. We grant you a license to use the work product we develop as part of an Education Services engagement in support of your internal business operations.

(b) Additional Education Terms.

(i) Instructor-Led Private Classes. For each in-person instructor-led private training class delivered at a non-MicroStrategy location, (a) if the instructor is required to travel to deliver the class, you will reimburse us for the instructor’s reasonable travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. If you redeem Education Credits for an instructor-led private training class and you cancel the class prior to commencement, you will reimburse us for any non-cancelable travel expenses and facility rental fees we incur in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR); and if you cancel within fourteen (14) business days prior to commencement, you may only reschedule the class to an alternate available date by redeeming additional Education Credits for the class; if the cancellation is more than fourteen (14) business days prior to commencement, you may reschedule the class to an alternate available date at no additional cost (such date must be within the applicable Education subscription term).

(ii) Courseware for Instructor-Led Training Classes. For each instructor-led training class (whether public or private, virtual or in-person) we deliver to you, we will make electronic versions of the course content files for the class (“Courseware”) available to you, and you may reproduce and distribute one paper copy of the Courseware to each of your employees (or other individual designated by you) who attends the class. Your use of the Courseware is limited to use only by those individuals who attend the class, solely for their own training purposes.

(iii) Intellectual Property and Subcontractors. All education course materials (including Courseware) are copyrighted by us and are our confidential information. Education and training Services are provided and delivered either directly by us or through our subcontractors. Notwithstanding anything to the contrary in any written agreement between you and us, if any, you consent to our use of subcontractors to provide education and training Services.

4. **Consulting.** We offer consulting Services on an Hourly basis, either as a packaged consulting Service offering or as an individual consultant resource Service offering, each as more particularly described below.

(a) **Types of Consulting Services.**

(i) **Packaged Consulting Services.** For packaged consulting Service offerings, we will perform the applicable tasks described below at your request on an Hourly basis at a single blended rate, regardless of the consultant(s) we engage to provide the Services. For these offerings, we will determine the level of consultant(s) who will provide the Services at our sole discretion, and the location where the Services will be performed (either onsite or remotely from our offshore Global Delivery Center).

(1) **Platform Services.** Under a “Platform Services” engagement, we will assist you with architecting, configuring, and deploying your Product architecture; tasks may include designing a best practice-based architecture that includes separate environments for development and user testing to enable end users to experience great application performance across applications during peak hours while minimizing system cost; developing a sizing strategy to maximize platform efficiency; configuring administration services and security settings including provisioning users, scheduling, subscriptions, system monitoring, OS patches, and back-ups; and designing an upgrade strategy to enable you to start using the latest innovations from MicroStrategy faster.

(2) **Application Services.** Under an “Application Services” engagement, we will assist you with defining, developing and deploying end-to-end enterprise or departmental applications; tasks may include determining the optimal technology approach and caching strategy to deliver effective, high-performance applications; leveraging a best practice approach for building new applications which includes conducting user workshops, building wireframes, iterating, testing, documenting and mentoring to increase adoption; and enhancing, optimizing or redesigning existing applications for improved user experience, faster performance or extended functionality.
(3) **Analytics Services.** Under an “Analytics Services” engagement, we will assist you with designing and configuring a scalable and reusable federated enterprise data layer that supports a single version of the truth; tasks may include configuring and optimizing connections to databases, big data sources, NoSQL sources, and enterprise applications to access enterprise data for use in analytics and mobility applications; designing an optimized in-memory strategy and publishing high performance data sets to Analysts, Data Scientists and Developers, and Architects, so they can build analytics, models and applications faster on trusted data; and conducting regression testing, reviewing the schema, resolving issues, and implementing a process for on-going data integrity management.

(4) **Mobility Services.** Under a “Mobility Services” engagement, we will assist you with defining, developing and deploying end-to-end enterprise mobile architecture and applications; tasks may include implementing a successful mobile strategy in a heterogeneous device environment that optimizes the experience for iOS and Android users; leveraging a best practice approach for building new mobile apps which includes conducting user workshops, building wireframes, iterating, testing, documenting and mentoring to increase adoption; developing a caching strategy that optimizes the performance and offline experience of apps; determining the optimal deployment strategy and navigating security requirements and industry regulations; and enhancing, optimizing or redesigning existing apps for improved user experience, faster performance or extended functionality such as write-back capabilities or mobile alerting via push notifications.

(ii) **Individual Consultant Resources.** We also offer consulting Services at certain individual consultant resource levels – Specialist, Master, Expert and Fellow. For these individual consultant resource Service offerings, we will perform the applicable tasks set forth on an order or a statement of work at your request on an Hourly basis at the hourly rates applicable to each resource. Except for Fellows, each of these resource levels are available either onsite or remotely from our offshore Global Delivery Center. Fellows are available onsite only.

(b) **Additional Consulting Terms.** You will reimburse us for all reasonable expenses we incur when delivering the Services in accordance with applicable regulations. We grant you a license to use the work product we develop as part of a consulting Services engagement in support of your internal business operations.

5. **Additional Limited Warranty Applicable to all Service Offerings.** We warrant that our employees and contractors will perform any Services listed on an order in a manner conforming to generally accepted industry standards and practices. For any breach of this warranty, your exclusive remedy and our entire liability will be reperformance of the Services at no cost to you.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached MModal Services, Ltd (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”).

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The Government Customer is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

e) Choice of Law. Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

f) Force Majeure. Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

g) Assignment. All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

h) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

i) Customer Indemnities. Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

j) Contractor Indemnities. All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

k) Renewals. All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

l) Future Fees or Penalties. All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

m) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties.

n) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

r) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

MMODAL SERVICES LTD.

MMODAL SERVICES LTD. LICENSE, WARRANTY AND SUPPORT TERMS

This agreement and the underlying GSA Schedule Contract, Schedule pricelist, and purchase order which by this reference are incorporated herein (together referred to hereinafter as the “Agreement” or “End User Agreement”) is a binding agreement between MModal Services, Ltd. and/or its Affiliates (hereinafter referred to as “M*Modal”) and the entity identified in the purchase order as the licensee of software from M*Modal (hereinafter referred to as “Ordering Activity”). M*Modal and Ordering Activity may be referred to herein individually as a “Party” and collectively as the “Parties.”

1 DEFINITIONS. The following terms when used with capital letters shall have the corresponding definitions:

1.1 “Access Credentials” means any user name, identification number, password, license or security key, security token, PIN or other security code, used alone or in combination to verify an individual's identity and authorization to access and use the Software.

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such person or entity. “Control” means the possession of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of equity interests, voting power or voting control, or by Agreement. Without limiting the generality of the foregoing, the holding of fifty percent (50%) or more of the equity interests of an entity, fifty percent (50%) or more of the voting power of an entity, or the voting control of an entity shall each be deemed Control.

1.3 “Authorized User” means each of the individuals employed by or engaged by Ordering Activity at a Facility with appropriate Access Credentials to the Software and/or Services.

1.4 “Ordering Activity Data” means clinical information, in any form or medium, collected, downloaded or otherwise received from Ordering Activity or an Authorized User by or through the Software.

1.5 “Ordering Activity Systems” means the Ordering Activity's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Ordering Activity or through third-party services.

1.6 “Confidential Information” means business or technical information disclosed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), in any form or medium, tangible or intangible, in connection with this Agreement and (a) is designated either in writing or orally as confidential at or within a reasonable time after such disclosure, (b) by the nature of the circumstances surrounding such disclosure would, in good faith, reasonably be expected to be treated as confidential information of the Disclosing Party, whether or not such information is identified as such by the Disclosing Party, or (c) has or could have commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information shall not include information that: (d) is shown by written documentation to already have been in the possession of, or known to, the Receiving Party prior to disclosure and prior to such Receiving Party having an obligation of confidentiality with respect to such Confidential Information, in each case provided that, to the extent such Confidential Information was obtained by the Receiving Party from a third party, such third party did not commit a breach of an obligation of confidence with respect to such Confidential Information, or (e) becomes publicly available through no fault or breach of the Receiving Party.

1.7 “Deliverables” means work produced from the Software, created for and delivered to Ordering Activity under this Agreement.

1.8 “Facility” means the Ordering Activity location where Software is downloaded and/or installed.

1.9 “Intellectual Property Rights” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets and know-how, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.10 “M*Modal Materials” means the Software, User Guide, M*Modal Systems and any other information, data, documents, materials, works, content, devices, tools, methods, processes, know-how, hardware, software and other technologies and inventions possessed by M*Modal prior to the commencement of or independent of M*Modal's delivery of the Services or Products, or acquired, developed or used by M*Modal in the performance of Services or licensing of Software (other than Ordering Activity Confidential Information and Ordering Activity Data), and any modifications, enhancements and derivative works thereof, regardless of who or how created, and all Intellectual Property Rights attendant thereto.
5.3.1 Products, or the media on which it is provided, that is modified or damaged by Ordering Activity;

5.3 The limited warranty.

5.1 M*Modal warrants that, for a period of ninety (90) days from completion of implementation, in the case of Products implemented by M*Modal or through third-party services, used by M*Modal in providing Services or Software.

2 EFFECT OF TERMINATION. In the event of termination or expiration of this Agreement (a) M*Modal will cease providing any Services; (b) the licenses related to this Agreement shall terminate, unless expressly stated otherwise in the Agreement; (c) Ordering Activity shall immediately cease using any M*Modal Confidential Information and destroy all copies of M*Modal Materials and other M*Modal Confidential Information that Ordering Activity has not previously returned to M*Modal; and (d) M*Modal shall immediately cease using any ordering Activity Confidential Information and destroy all copies of Ordering Activity Data and other ordering Activity Confidential Information that M*Modal has not previously returned to Ordering Activity. Notwithstanding the above, a Party may retain a copy of the other’s Confidential Information to comply with its legal obligations, or to the extent Confidential Information is embedded in the Receiving Party’s off-site disaster recovery or information technology backup systems until such systems are purged in accordance with the Receiving Party's systematic back up and archiving procedures.

3 RESERVED.

4 INTELLECTUAL PROPERTY

4.1 General: Except for the limited license(s) granted herein, all right, title and interest in and to M*Modal Materials are retained by M*Modal or its licensors. Absent the prior, written consent of M*Modal, neither Ordering Activity nor any Authorized User shall alter or remove any trademark, copyright, trade secret, patent, proprietary or other legal right or notice or legend contained in or on copies thereof. Ordering Activity shall make reasonable efforts to protect any M*Modal Materials from unauthorized use. Ordering Activity unconditionally and irrevocably assigns to M*Modal its entire right, title and interest in and to any Intellectual Property Rights that Ordering Activity may now or hereafter have in or relating to the M*Modal Materials (including any rights in derivative works or patent improvements), whether held or acquired by operation of law, Agreement, assignment or otherwise. Ownership of derivative works should be as set forth in the copyright statute. 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

4.2 Continuous Improvement: Ordering Activity acknowledges and agrees that M*Modal may use, compile (including creating statistical or other models), and analyze Ordering Activity Data to (a) improve, develop or otherwise modify M*Modal Materials, and (b) use computerized processes to tailor and deliver to Ordering Activity relevant communications. To the extent Ordering Activity Data is used or compiled in or with any M*Modal Material, all Intellectual Property Rights in such M*Modal Materials shall be solely owned by M*Modal.

4.3 Ordering Activity Data and Deliverables: Except for the limited purpose of performing Services or providing Software, and except for the limited license(s) granted herein, all right, title and interest in and to Ordering Activity Data is retained by Ordering Activity. Subject to this Agreement, and except to the extent Deliverables include any M*Modal Materials or M*Modal Confidential Information, M*Modal hereby assigns to Ordering Activity all Intellectual Property Rights in and to the Deliverables, whether held or acquired by operation of law, contract, assignment or otherwise. Ordering Activity is responsible for making and maintaining its own backup copies of any Ordering Activity Data and Deliverables.

4.4 License Grant: Any license granted to Ordering Activity in the Software (a) is non-exclusive and non-transferable; and (b) extends to Ordering Activity and Authorized Users to access and use the Software in the United States solely for Ordering Activity’s internal business purposes. The Software shall be downloaded and installed on only computing devices for a single Authorized User. The term of the license shall be set forth in the ordering documents. 4.5 License Restrictions: Without expanding the limited license grant hereunder, Ordering Activity and Authorized Users shall not (a) disassemble, decompile, reverse compile or reverse engineer the Software, or take any action in order to derive a source code equivalent of the Software, (b) release to any third party results of any benchmark, performance, or functionality tests performed on the Software, (c) release to any third party results obtained through use of the Software other than the Deliverables, (d) incorporate, bundle or pre-load any portion of the Software into any software or computing device of Ordering Activity except as expressly set forth in this Agreement, (e) copy, modify or create derivative works of the Software, (f) sublicense the Products or any portion thereof to a third party, or otherwise permit use of the Software including, without limitation, timesharing or networking use by any third party, without the prior written consent of M*Modal, (g) link, combine or use the Software with any open source software without the written permission of M*Modal if such linkage, combination or use would create a risk, or have the “viral” effect, of disclosing or licensing M*Modal source code or rendering any M*Modal patent unenforceable under the GNU General Public License or under the terms of any other open source license applicable thereto, or (h) cause the Software to interact with the functionality of a Third Party Product similar to that contained in the Software. For clarification, a Third Party Product shall not be deemed to “interact with” the Software if such Third Party Product does not export or import data from the Software to such Third Party Product, or vice versa.

5 M*MODAL WARRANTIES AND DISCLAIMERS.

5.1 M*Modal warrants that, for a period of ninety (90) days from completion of implementation, in the case of Products implemented by M*Modal, or shipment in all other cases (the “Warranty Period”), Products shall materially function in accordance with applicable Specifications and the media on which Software is distributed shall be free from defects in materials and workmanship. Ordering Activity must provide M*Modal with written notice of breach of this warranty during the Warranty Period setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity’s sole and exclusive remedy, M*Modal shall, at M*Modal’s option, (a) repair or replace that portion of the Products effected.

5.2 M*Modal warrants that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. Ordering Activity must provide M*Modal with written notice of breach of this warranty within thirty (30) days after performance of Services setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity’s sole and exclusive remedy, M*Modal shall, at M*Modal’s option re-perform the Services.

5.3 The limited warranties set forth above do not apply to problems arising out of or related to:

5.3.1 Products, or the media on which it is provided, that is modified or damaged by Ordering Activity;
5.3.2 Any operation or use of, or other activity relating to, the Products other than as specified in the User Guide, including any incorporation in the Products of, or combination, operation or use of the Products in or with, any technology or service not specified for Ordering Activity’s use in the User Guide or expressly authorized by M*Modal in writing;
5.3.3 Ordering Activity’s or any Authorized User’s negligence, abuse, misapplication or misuse of the Products;
5.3.4 Ordering Activity’s failure to promptly install maintenance releases that M*Modal has previously made available to Ordering Activity;
5.3.5 Operation of or access to Ordering Activity Systems; and
5.3.6 Third Party Products.
5.4 To the extent applicable, M*Modal shall pass through to Ordering Activity any warranty provided to M*Modal for Third Party Products.
5.5 OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH ABOVE OR IN THIS AGREEMENT, M*MODAL MAKES NO FURTHER OR ADDITIONAL WARRANTIES IN CONNECTION WITH ANY PURCHASE, LICENSE OR SALE OF SERVICES OR PRODUCTS. M*MODAL DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. M*MODAL DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

6 ORDERING ACTIVITY WARRANTIES AND ACKNOWLEDGEMENTS. Ordering Activity warrants that Ordering Activity and any person or entity using the Software shall (a) use the Software consistent with the User Guide and this Agreement; (b) comply with all applicable laws and regulations, including export and import laws, in connection with receipt or use of the Software; (c) be responsible for the accuracy and legality of information provided to M*Modal; and (d) be responsible for identifying errors in the results from use of the Software or before relying on such results. Ordering Activity agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by M*Modal regarding future functionality or features. Ordering Activity further acknowledges that M*Modal may make changes to the Software determined reasonably necessary by M*Modal so long as such changes do not materially decrease the functionality of the Software.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Mobileireon, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-3SF-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 21.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.


g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 43.102, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EUA, and the EUA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it co

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
This End User License Agreement ("Agreement") is entered into as of the later date signed below ("Effective Date") by and between MobileIron, Inc. ("MobileIron"), a Delaware corporation having its principal place of business at 415 East Middlefield Road, Mountain View, CA 94043, and the customer/ordering activity specified below or an ordering activity identified in an order to a MobileIron reseller ("Customer").

This Agreement consists of this page, the attached terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies and does not modify any terms and conditions between Customer and any prime contractor regarding the terms and conditions of the prime contractor’s prime contract. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer to MobileIron before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

Except as otherwise provided in this Agreement, all legal notices will be given in writing to the addresses below and will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with MobileIron and Customer’s standard ordering procedures.

This Agreement is agreed to and executed by authorized representatives of the parties.

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<td>Attn: General Counsel</td>
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<td>415 East Middlefield Road</td>
<td>Mountain View, CA 94043</td>
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<td>With an email copy to: <a href="mailto:contracts@mobileiron.com">contracts@mobileiron.com</a></td>
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**TERMS AND CONDITIONS**

1. **Definitions.**
   a. "Documentation" means the written and/or electronic release notes, implementation guides, or other published technical documentation about specific Software that is provided by MobileIron to Customer together with the delivery of the Software.
   b. "License Term" means the term of the license granted for specific Software, as identified in the relevant Order and starting when the Software is first made available for download by Customer.
   c. "Order" means any purchase order, product schedule or ordering document between Customer and MobileIron (or an authorized reseller, if applicable) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).
   d. "Software" means the object code version of MobileIron proprietary computer programs (including any software accessed as a service) described in the relevant Order, including any Documentation and Updates.
   e. "Updates" means any correction, update, upgrade, patch, or other modification or addition made by MobileIron to specific Software.

2. **License Grant.**
   a. Software License. Subject to the terms and conditions of this Agreement, during the applicable License Term, MobileIron hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to use the Software solely for Customer’s internal use with Customer’s ordinary business operations and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Subject to the restrictions in Section 3, below, Customer may provide Software licenses to its employees, contractors, and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement.
3. **Use Restrictions.** As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the Software (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) modify, adapt, or create any derivative works based on the Software; (c) distribute, sell, license, lease, transfer, or otherwise provide any Software to third parties except as expressly provided in this Agreement; (d) provide the Software as a service to third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) unbundled any component of the Software; or (f) use the Documentation except for supporting Customer's authorized use of the Software; or (g) use the Software to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (h) disrupt the integrity or performance of any Software accessed as a service; or (i) employ or authorize a MobileIron Competitor to use or view the Software or Documentation, or to provide management, hosting, support or similar services with regard to the Software without the prior written consent of MobileIron. “MobileIron Competitor” means Good Technology by Blackberry, AirWatch by VMware, Maas360 by IBM Corporation, XenMobile by Citrix, and InTune by Microsoft.

4. **Payment; Additional Licenses; Reporting.** Customer shall pay the fees for MobileIron products and/or services as set forth in the applicable Order. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from MobileIron, all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice. Customer shall pay all applicable fees, insurance costs, and taxes, excluding taxes on MobileIron's net income. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on MobileIron's then-current price list or as specified in the Order or in the Reseller's prime contract. Upon written request by MobileIron, Customer shall provide a usage report, which in certain cases may be generated using the Software, or requesting additional licenses to cover the excess usage. If the actual number of registered devices or users exceeds the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on MobileIron's then-current price list or as specified in the Order or in the Reseller's prime contract. Upon written request by MobileIron, Customer shall provide a usage report, which in certain cases may be generated using the Software, or requesting additional licenses to cover the excess usage.

5. **Confidentiality.**
   a. **Definition.** “Confidential Information” means non-public information provided by one party (“Discloser”) to the other (“Recipient”) that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure without a duty of non-disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser’s information. MobileIron Confidential Information includes but is not limited to all Software (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the Software), Documentation and its derivatives, and MobileIron’s pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.
   b. **Non-disclosure and Non-Use.** The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser’s Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser’s Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser’s Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser’s option, the Discloser’s Confidential Information. The Confidential Information of MobileIron is exempt from release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4) and is subject to the Federal Trade Secrets Act, 18 U.S.C. 1905.

6. **Ownership.** All Software is licensed and not sold. MobileIron and its suppliers- own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the Software and its derivative works. Customer is not obligated to provide MobileIron with any suggestions or feedback about the products or services (“Feedback”). To the extent Customer does provide Feedback to MobileIron, Customer assigns ownership of such Feedback to MobileIron and MobileIron may use and modify such Feedback without any restriction or payment.

7. **Indemnity.**
   a. **Indemnification.** Subject to 28 USC 518, MobileIron shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees (“Customer Indemnitee(s)”) by an unaffiliated third party alleging that Customer’s use of the Software infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.
   b. **Procedures.** MobileIron’s indemnification obligation is conditioned on Customer Indemnitee(s): (i) giving MobileIron prompt written notice of such claim, (ii) permitting (subject to 28 USC 518) MobileIron to solely control and direct the defense or settlement of such claim, provided MobileIron shall not settle any claim in a manner that requires Customer to admit liability or pay money without Customer’s prior written consent, and (iii) providing MobileIron all reasonable assistance in connection with the defense or settlement of such claim, at MobileIron’s cost and expense.
   c. **Remedies.** If such a claim occurs or in MobileIron’s opinion is reasonably likely to occur, MobileIron may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable Software, (ii) modify or replace the applicable Software to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer’s license to the Software.
affected portion of applicable Software and refund (or cause the authorized reseller to refund) a portion of the pre-paid, unused license fees paid by Customer corresponding to such Software. In the case of a perpetual license, the unused portion of the license fees shall be determined on a pro-rata basis over a three (3) year period starting from the initial delivery of the Software.

d. Exclusions. MobileIron shall have no obligations under this Section 7 if the claim is based upon or arises out of: (i) any modification to the applicable Software not made by or at the direction of MobileIron, (ii) any combination or use of the applicable Software with any third party equipment, products or systems, to the extent that such claim is based on such combination or use, (iii) Customer’s continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer’s failure to use Updates made available by MobileIron, (v) Customer’s failure to use the Software in accordance with the applicable Documentation, and/or (vi) use of the Software outside the scope of the license granted under this Agreement. The remedies specified in this Section 7 constitute Customer’s sole and exclusive remedies, and MobileIron’s entire liability, with respect to infringement of third party intellectual property rights.

8. Support and Maintenance Services. Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.


a. Software. For ninety (90) days following the commencement of the applicable License Term, MobileIron represents and warrants to Customer that the Software materially conforms to the specifications specified in the relevant Documentation. Customer’s sole and exclusive remedy and the entire liability of MobileIron for MobileIron’s breach of this warranty will be for MobileIron, at its option, to repair or replace such Software or refund the license and associated support and maintenance fees paid for such non-conforming Software, in which case the license to the Software shall terminate.

b. Professional Services. Customer may order professional services from MobileIron. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by MobileIron to Customer, MobileIron represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer’s sole and exclusive remedy and the entire liability of MobileIron for MobileIron’s breach of this warranty will be for MobileIron, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

c. Exclusions. The express warranties do not apply if the applicable Software or hardware (i) has been modified, except by or at the direction of MobileIron, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

d. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE SOFTWARE, AND SERVICES ARE PROVIDED “AS IS,” AND MOBILEIRON PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MOBILEIRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. Term and Termination. The license granted herein with respect to specific Software shall remain effective until the License Term for the relevant Software expires or the license for the relevant Software is terminated. This Agreement shall remain effective until the earliest of (a) termination in accordance with this Section 10, (b) expiration of the applicable License Term or (c) expiration of the applicable Support & Maintenance Term. If MobileIron agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days’ written notice of a material breach by the other party, unless the breach is cured within the 30-day notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. For perpetual licenses only, the license grant in Section 2 shall survive expiration or termination of this Agreement unless MobileIron has terminated due to Customer’s uncured material breach. In addition, Sections 1, 3-7, and 9-12, and all liabilities that accrue prior to termination shall survive expiration or termination of this Agreement for any reason. Any dispute regarding a termination for breach under this section, will be resolved in accordance with the Contract Disputes Act.

11. Limitation of Liabilities. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY), OR CUSTOMER’S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR (a) ANY LOSS OF PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO MOBILEIRON FOR THE RELEVANT SOFTWARE, OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.


a. Export/Import. Software and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.

b. U.S. Government Rights. The Software and Documentation are “commercial items” as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), MobileIron provides the Software and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government
acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data
and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency
within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or
commercial computer software documentation), only those rights in technical data and software customarily provided in this
Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD
agencies. Any Federal Executive, Legislative, or Judicial Agency shall not apply those rights in technical data and software customarily
provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights
not conveyed under the terms described in this Section, it must negotiate with MobileIron to determine if there are acceptable terms
for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any
applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any
way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to
terminate its use of the Software and Documentation and return the Software and Documentation and any other software or
technical data delivered as part of the Software and Documentation, to MobileIron. This U.S. Government Rights clause in
this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that
addresses Government rights in computer software or technical data under this Agreement.

c. In-Licensed Materials and Open Source. The Software may contain or may interoperate with software services or other technology
that is not owned by MobileIron but has been licensed to MobileIron by a third party or that is available under open source or free
software licenses (“In-Licensed Materials”). The In-Licensed Materials may be subject to additional terms and conditions, as
identified on Schedule A, attached hereto, or as otherwise made available to Customer. Such terms and conditions are
incorporated by reference herein. To the extent MobileIron uses open source software in its Software, the applicable licenses shall
not restrict the license rights granted to Customer under this Agreement or impose further obligations or restrictions upon Customer,
provided Customer uses the Software in accordance with this Agreement.

d. Governing Law and Jurisdiction. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be
governed by, construed, and enforced in accordance with Federal common law of the United States and where there is no Federal
common law, the laws of the State of California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and
venue for actions arising under this Agreement shall be state and federal courts in Santa Clara, California, and the parties agree to
service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United
Nations Convention on the International Sale of Goods shall not apply to this Agreement.

e. Assignment. Neither party may assign this Agreement without prior written consent of the other party, provided however, subject to
FAR 42.12, either party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in
violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement
shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

f. Data Communications. MobileIron shall only collect, access, use, store, safeguard, disclose and transfer (“Process”) Personal
information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the Software and its features
and associated services, provide Customer support, and help customer prevent or address service or technical problems, (ii) as
otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain
such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of
Personal Information as are required under applicable law, rules or regulations. “Personal Information” means any information
relating to an identified or identifiable individual user that is obtained by or communicated to MobileIron by Customer in connection with
MobileIron’s obligations under this Agreement. MobileIron collects, analyzes, and uses aggregated, de-identified technical
data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to
facilitate market research, product development/improvement and to provide support and maintenance services. MobileIron may
use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or
is not attributable to any individual.

g. Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting MobileIron’s or its suppliers’
intellectual property rights in Software or either party’s Confidential Information may cause irreparable injury to such party for which
monetary damages would be an inadequate remedy and the non-breaching party shall be entitled, to the extent permitted under
Federal procurement law, to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under
this Agreement or at law.

h. Publicity. MobileIron may publicly disclose that Customer is a customer of MobileIron and a licensee of the Software, including in a
list of MobileIron customers and other promotional materials, however, MobileIron will not state or imply that Customer endorses any
MobileIron product or service.

i. Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of
partnership, joint venture, employment or agency between the parties.

j. Waiver & Severability: Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a
waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or
unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the
remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or
condition set forth herein waived, by written consent of both parties.
MOBILEIRON, INC.
Schedule A: Terms and Conditions Related to In-Licensed Materials and Third Party Products
(version August 12, 2015)

MobileIron and Customer have entered into one or more agreement(s) relating to the use and license of MobileIron software, which may contain In-Licensed Materials (the “Customer Agreement”), and the following terms and conditions shall apply.

I. IN-LICENSED MATERIALS

The software licensed under the Customer Agreement may contain or be provided with the In-Licensed Materials listed below. Such In-Licensed Materials shall be deemed “Software” (and subject to the same terms and conditions applicable to “Software”) under the Customer Agreement notwithstanding anything to the contrary therein; provided, however, in connection therewith, additional or different terms are applicable as identified below. In-Licensed Materials shall have the meaning set forth in the Customer Agreement if defined therein; otherwise “In-Licensed Materials” means software, services or other technology software that is not proprietary to MobileIron but has been licensed to MobileIron and is contained in or may interoperate with the Software.

A. MobileIron “Silver” or “Gold” Bundle, also sold as Core:

1. Cell Tower Information (only applies to Customers outside the United States). If Customer is provided any cellular tower identification information with associated latitude and longitude location information, Customer agrees that neither it nor its end users will use such location and longitude location information to create a latitude/longitude lookup database for cellular towers.

2. SMS Messaging. (a) Customer will not use SMS messaging service to transmit inappropriate content. Inappropriate content includes any content that (a) is unsolicited, (b) causes the introduction of viruses, worms, Trojan horses, e-mail bombs, cancelbots or other similar computer programming routines, (c) is unlawful or offensive as determined by MobileIron’s suppliers in their sole discretion, (d) is misleading or inaccurate, or (e) infringes the intellectual property of any person.

3. Microsoft® Exchange Activesync. (a) With respect to Microsoft® Exchange Activesync, the provision of this service (or software, as applicable) to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any third party content or software service that you use to access this service (or to access the functionality provided by software, as applicable). (b) With respect to Microsoft® Exchange Activesync, use is limited to internal use (including such use by agents or contractors exclusively on Customer’s behalf) as part of the Core offering for the sole purpose of managing hand-held devices of Customer’s employees, agents and/or contractors.

4. Email+. (a) “Email+ Device Software” means MobileIron’s Email+ client device email software delivered by MobileIron to Customer, including updates, modifications or upgrades of the same delivered to Customer during the term of the Agreement. (b) “EAS-Enabled Server” means (i) Microsoft Exchange server 2003, 2007, 2010 or any subsequent version thereof released during the term of the Agreement, (ii) any Microsoft owned or operated server that provides Live Hotmail services, and (iii) any server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync(TM) Protocol. (c) MobileIron grants to Customer a non-exclusive right to permit Customer Representatives to use and reproduce the Email+ Software (in object code form) only: (i) in mobile phones, smartphones, laptops, or tablets that are managed by MobileIron’s Software and (ii) for Customer’s use with services provided by EAS-Enabled Servers.

5. Splunk Universal Forwarder. (a) The Splunk Universal Forwarder may forward data generated by the MobileIron Core product to Splunk Enterprise, a separate third party product not licensed or distributed by MobileIron. In order to be licensed to use the Splunk Universal Forwarder, Customer is required to obtain a license to Splunk Enterprise, directly or indirectly, from Splunk Inc. (b) Customer may not use any part of the Splunk Universal Forwarder, including third party code, in a manner not related to the MobileIron Core product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to the Splunk Universal Forwarder.

6. Mobile@Work In-House App SDK. (a) MobileIron Mobile@Work In-House App SDK is a custom SDK designed to allow Customer to brand Mobile@Work with Customer’s own brand. MobileIron offers this SDK without any additional charge. Use by Customer is optional and deemed acceptance of the terms below. (b) MobileIron is willing to license this SDK on the same terms and conditions as “Software,” except that: (i) Customer may only use this SDK to brand Mobile@Work with its own brand; (ii) Customer may distribute its branded Mobile@Work application through its enterprise AppStore; and (iii) MobileIron will only support the current version of this SDK and the immediately preceding version for 6 months following the release of the current version.

B. MobileIron “Platinum” Bundle (includes the terms and conditions for the MobileIron “Silver” and “Gold” Bundle as well as the additional terms below):

1. MobileIron Help@Work for iOS is a custom SDK designed to allow Customer to develop the Help@Work for iOS app, which will allow the Customer’s help-desk administrator to remotely view the screen of a managed iOS device, while working with the individual device-holder on troubleshooting workflows.

2. Authorized Developer. Customer represents and warrants that it has a valid Apple iOS Developer Program Enterprise License Agreement and hereby appoints MobileIron as an Authorized Developer under such agreement solely in connection with MobileIron’s provision of Help@Work for iOS to Customer.

3. Help@Work for iOS Display Finder. If Customer at its option chooses to download the Help@Work for iOS Display Finder component, Customer will be required to accept the accompanying Apple end-user software license agreement (EULA), which solely governs the Apple software included therewith.

4. ServiceConnect Integrations. (a) “ServiceConnect Integrations” are software modules provided by MobileIron that integrate MobileIron Core or MobileIron Cloud with separate third party products and/or services not licensed or distributed by MobileIron (e.g. ServiceNow or Splunk). In order to be licensed to use a ServiceConnect Integration, Customer is required to obtain a license to the relevant third party product or service, directly or indirectly, from the third party (“Underlying Third Party”). (b) Customer may not use any part of any ServiceConnect Integrations, including third party code, in a manner not related to the MobileIron Core or MobileIron Cloud product. (c) Customer agrees that the Underlying Third Party does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of any ServiceConnect Integration and that the Underlying Third Party shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to Customer’s use of or reliance upon any ServiceConnect Integration. (d) MobileIron disclaims all warranties and indemnities in connection with the ServiceConnect Integrations and the third party product or services on which the ServiceConnect Integrations run. The Underlying Third Party makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to any ServiceConnect Integration. (e) The Underlying
Third Party may, at any time and for any reason, discontinue its product or service, or discontinue or disrupt interoperation with the ServiceConnect Integration. MobileIron shall have no liability for any such discontinuance or disruption.

MOBILEIRON, INC.
Schedule B: Support & Maintenance Agreement
(version May 26, 2016)

If Customer has paid fees to obtain support and maintenance services directly from MobileIron, this Support and Maintenance Agreement ("SMA") applies to such support and maintenance services. If Customer has paid fees to obtain support and maintenance services directly from an authorized reseller, the terms regarding support in this SMA shall not apply and shall instead be determined between Customer and the relevant authorized reseller, and the terms regarding maintenance are set forth in Section 3 below.

1. Definitions
   a. “Designated Support Contact” means any Customer employee appointed by Customer who has been trained and certified by MobileIron to be a primary Customer contact with MobileIron for support services.
   b. “Incident” means when the Supported Software does not seem to materially perform in accordance with the specifications provided in the relevant Documentation.
   c. “Response” means when MobileIron support personnel have (i) triaged the Incident, (ii) contacted Customer, and (iii) begun initial troubleshooting on the Incident.
   d. “Support & Maintenance Term” means the duration of support and maintenance services that MobileIron must provide, as specified in the relevant Order. The initial Support & Maintenance Term shall commence when the Software is first made available for download by Customer. Any renewal Support & Maintenance Term shall commence upon the day immediately following the end of the then-current Support & Maintenance Term.
   e. “Supported Software” means the current shipping release of the Software and any prior release for one (1) year after such prior release has been superseded by a subsequent shipping release. (For example, if Software shipping version 5.0 is released in January 2016, version 5.1 is released in June 2016, and version 5.2 is released in December 2016, MobileIron shall support version 5.0 until June 2017, version 5.1 until December 2017, and version 5.2, assuming version 5.2 has not been superseded yet.)

2. Support Services
   a. Support and Trouble Tickets. During the Support & Maintenance Term, MobileIron shall use commercially reasonable efforts to provide support services to Customer, as described below. The Designated Support Contact may report Incidents to MobileIron through MobileIron’s Support Portal (available at https://help.mobileiron.com) or support telephone helpline, and thereafter, the parties may cooperate to address the Incidents via email, telephone or the Support Portal. MobileIron shall provide Customer with a trouble ticket number that Customer can use to track the status of Incidents. MobileIron may close the trouble ticket without further responsibility if Customer fails to respond to a request for additional information or to confirm that the trouble ticket is resolved within ten (10) days of MobileIron’s request or receipt of a patch or workaround (as applicable). Support services for Supported Software are available to Customers who have purchased direct support services or higher, for twenty-four hours per day and seven days per week.
   b. Initial Response Times for Technical Support Issues. MobileIron shall provide Responses for Incidents that have been properly reported through the Support Portal in accordance with the table below:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Initial Response Time for Direct Support</th>
<th>Initial Response Time for Premium Plus Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A severity one (1) issue is a catastrophic production problem which may severely impact Customer's production systems or that causes Customer's production systems to go down or not function. There may be a loss of production data and no procedural work around exists.</td>
<td>1 hour</td>
<td>30 minutes</td>
</tr>
<tr>
<td>2</td>
<td>A severity two (2) issue is an issue where Customer’s production systems are functioning but does so in a severely reduced capacity. The situation causes significant impact to portions of Customer's business operations and productivity. The systems are exposed to potential loss or interruption of service, including disruption of Customer’s High Availability Configuration.</td>
<td>4 hours</td>
<td>2 hours</td>
</tr>
<tr>
<td>3</td>
<td>A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss. This issue impairs some operations but allows Customer to continue to function. This may be a minor issue with limited/no loss of functionality or impact to Customer’s operation and there is an easy circumvention or avoidance by the end user. This includes errors in Documentation.</td>
<td>1 business day</td>
<td>1 business day</td>
</tr>
<tr>
<td>4</td>
<td>A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.</td>
<td>5 business days</td>
<td>5 business days</td>
</tr>
</tbody>
</table>

*MobileIron business hours are 6 am-6 pm PT, Monday through Friday (excluding holidays)*

b. Limitations. MobileIron shall have no obligations under this Section 2: (i) if the Incident cannot be reproduced by MobileIron, (ii) if the Supported Software has been modified or repaired, except by or at the direction of MobileIron, (iii) if the Supported Software has not been installed, used or maintained in accordance with the Documentation, (iv) the Supported Software is used with equipment, products or systems not supplied by MobileIron, (v) Customer does not permit MobileIron timely access to the logs or to perform remote troubleshooting sessions on the affected server or component, as reasonably requested by MobileIron, and/or (vi) for information or data contained in, stored on, or integrated with any Supported Software.

GS-35F-0511T
https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
   a. Maintenance. During the Support & Maintenance Term, MobileIron (or authorized reseller, if applicable) shall make available to Customer all Updates to the extent generally released to other MobileIron customers that purchased the same maintenance services. Such maintenance services shall apply only to the current shipping release of the Software and, for security fixes only, the immediately prior release.
   b. Reinstatement. If the Support & Maintenance Term expires without renewal, this SMA shall terminate as of the expiration date. Customer may reinstate this SMA by paying MobileIron an amount equal to the support and/or maintenance fees that would have been payable during the period of lapse and a reinstatement fee.

4. General. MobileIron may revise the terms of this SMA, provided that: (a) such revision is made to its standard SMA terms made generally available to other customers, (b) MobileIron provides written/email notice of such revision at least sixty (60) days prior to the expiration of the then-current Support & Maintenance Term, (c) such revisions only apply to renewal terms, and (d) renewal is subject to mutual agreement. Any delay or failure in the performance by MobileIron shall be excused if and to the extent caused by a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of MobileIron, including but not limited to acts of God (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo, rebellion, revolution, insurrection, military or usurped power, civil war, acts or threats of terrorism, riots, strikes or labor disputes (excluding by MobileIron employees).
MOBILEIRON, INC.
SOFTWARE-AS-A-SERVICE (SAAS) TERMS OF USE
FEDERAL END USER
(version May 26, 2016)

This Software-as-a-Service Terms of Use (“Agreement”) is entered into as of the later date signed below (“Effective Date”) by and between MobileIron, Inc. (“MobileIron”), a Delaware corporation having its principal place of business at 415 East Middlefield Road, Mountain View, CA 94043, and the customer/ordering activity specified below or an ordering activity identified in an order to a MobileIron reseller (“Customer”).

This Agreement consists of this page, the attached terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies and does not modify any terms and conditions between Customer and any prime contractor regarding the terms and conditions of the prime contractor’s prime contract. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer to MobileIron before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

Except as otherwise provided in this Agreement, all legal notices will be given in writing to the addresses below and will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with MobileIron and Customer’s standard ordering procedures.

This Agreement is agreed to and executed by authorized representatives of the parties.

<table>
<thead>
<tr>
<th>MOBILEIRON, INC.</th>
<th>CUSTOMER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Printed Name:</td>
<td>Printed Name:</td>
</tr>
<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Principal Place of Business:</td>
<td>Principal Place of Business:</td>
</tr>
<tr>
<td>415 East Middlefield Road, Mountain View, CA 94043</td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td>Notices to MobileIron:</td>
<td>Notices to Customer:</td>
</tr>
<tr>
<td>MobileIron, Inc.</td>
<td>With an email copy to: <a href="mailto:contracts@mobileiron.com">contracts@mobileiron.com</a></td>
</tr>
<tr>
<td>Attn: General Counsel</td>
<td>With an email copy to (if applicable):</td>
</tr>
<tr>
<td>415 East Middlefield Road</td>
<td></td>
</tr>
<tr>
<td>Mountain View, CA 94043</td>
<td></td>
</tr>
</tbody>
</table>

TERMS AND CONDITIONS

3. Definitions.
   a. “Documentation” means the written and/or electronic release notes, implementation guides, or other published technical documentation about the applicable SaaS Product that is provided by MobileIron to Customer together with access to the SaaS Product.
   b. “License Term” means the term of the access rights granted for the SaaS Product, as identified in the relevant Order, starting when MobileIron delivers to Customer the relevant credentials to access and use the SaaS Product.
   c. “Order” means any purchase order, product schedule or ordering document between Customer and MobileIron (or an authorized reseller, if applicable) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).
   d. “SaaS Product” means the mobile enterprise management services made available by access to and use of software hosted by MobileIron to which Customer has purchased a license under the relevant Order. References in this Agreement to the SaaS Product shall include the Software.
   e. “Software” means the object code version of MobileIron proprietary computer programs made available by MobileIron for download by Customer for use in connection with any SaaS Product, including any Documentation and Updates.
   f. “Updates” means any correction, update, upgrade, patch, or other modification or addition made by MobileIron to specific Software.

4. Rights of Access and Use.

https://www.immixgroup.com/contract-vehicles/gsa-it-70/0511T/
a. **Access and Use.** Subject to the terms and conditions of this Agreement, during the applicable License Term, MobileIron hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to access and use the SaaS Product and to copy, and install the Software, in each case, solely for Customer’s internal use with Customer’s ordinary business operations and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Subject to the restrictions in Section 3, below, Customer may provide access to the SaaS Product to its employees, contractors, and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement.

b. **Trial License.** The terms applicable to the SaaS Product apply to trial copies of the SaaS Product ("Trial Product"), except for the following different or additional terms: (i) the License Term for Trial Product is thirty (30) days, which MobileIron may extend upon written consent; (ii) the trial period shall commence on the date that MobileIron first provides Customer credentials to access the the Trial Product; (iii) Trial Product is provided "AS IS" without warranty of any kind, and MobileIron disclaims all warranties, indemnities, and all other liabilities for Trial Product; (iv) Customer is not entitled to any support and maintenance services or any Updates for Trial Product; and (v) either party may terminate the license for Trial Product upon five (5) days' written notice to the other party.

3. **Use Restrictions; Customer Obligations.** As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the SaaS Product (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) modify, adapt, or create any derivative works based on the SaaS Product; (c) distribute, sell, license, lease, transfer, or otherwise provide any SaaS Product to third parties except as expressly provided in this Agreement; (d) provide the SaaS Product as a service to unaffiliated third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) disclose any component of any SaaS Product; or (f) use the Documentation except for supporting Customer’s authorized use of the SaaS Product; or (g) use the SaaS Product to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (h) disrupt the integrity or performance of any SaaS Product accessed as a service; or (i) employ or authorize a MobileIron Competitor to use or view the SaaS Product or Documentation, or to provide management, hosting, support or similar services with regard to the SaaS Product without the prior written consent of MobileIron. “MobileIron Competitor” means Good Technology by Blackberry, AirWatch by VMWare, Maas360 by IBM Corporation, XenMobile by Citrix, and InTune by Microsoft. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any SaaS Product and notify MobileIron promptly of any such unauthorized access or use.

13. **Payment: Additional Licenses; Reporting.** Customer shall pay the fees for MobileIron products and/or services as set forth in the applicable Order. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from MobileIron, all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice. Customer shall pay all applicable fees, insurance costs, and taxes, excluding taxes on MobileIron's net income. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on MobileIron’s then-current price list or as specified in the Order or in the Reseller’s prime contract. Customer acknowledges that MobileIron's delivery and support infrastructure enable MobileIron to access the device or user count for the SaaS Product. Upon written notice by MobileIron, Customer shall certify in writing the number and type of registered devices or users.

14. **Confidentiality.**

   a. **Definition.** "Confidential Information" means non-public information provided by one party ("Discloser") to the other ("Recipient") that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure without a duty of non-disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser’s information. MobileIron Confidential Information includes but is not limited to all SaaS Products (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the SaaS Products), Documentation and its derivatives, and MobileIron's pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.

   b. **Non-disclosure and Non-Use.** The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and obligations under this Agreement, and (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser’s Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser’s Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser’s Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser's option, the Discloser's Confidential Information. The Confidential Information of MobileIron is exempt from release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4) and is subject to the Federal Trade Secrets Act, 18 U.S.C. 1905.

15. **Ownership.** MobileIron and its suppliers own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the SaaS Product and its derivative works. Customer is not obligated to provide MobileIron with any suggestions or feedback about the products or services ("Feedback"). To the extent Customer does provide Feedback to MobileIron, Customer assigns ownership of such Feedback to MobileIron and MobileIron may use and modify such Feedback without any restriction or payment.

16. **Indemnity.**

   a. **Indemnification by MobileIron.** Subject to 28 USC 518, MobileIron shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees ("Customer Indemnitee(s)") by an unaffiliated third party alleging that Customer’s use of the SaaS Product infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.

GS-35F-0511T  https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/  Page 211
b. Remedies. If a claim under Section 7.a occurs or in MobileIron's opinion is reasonably likely to occur, MobileIron may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable SaaS Product, (ii) modify or replace the applicable SaaS Product to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer's license to the affected portion of applicable SaaS Product and refund (or cause the authorized reseller to refund) a portion of the pre-paid, unused license fees paid by Customer corresponding to such SaaS Product.

c. Exclusions. MobileIron shall have the obligation set forth under this Section 7 if the claim is based upon or arises out of: (i) any modification to the applicable SaaS Product not made by or at the direction of MobileIron, (ii) any combination or use of the applicable SaaS Product with any third party equipment, products or systems, to the extent that such claim is based on such combination or use, (iii) Customer's continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer's failure to use Updates made available by MobileIron, (v) Customer's failure to use the SaaS Product in accordance with the applicable Documentation, and/or (vi) use of the SaaS Product outside the scope of the license granted under this Agreement. This Section 7 constitutes Customer's sole and exclusive remedies, and MobileIron's entire liability, with respect to infringement of third party intellectual property rights.

d. Procedures. MobileIron's indemnification obligation is conditioned on Customer: (i) giving MobileIron prompt written notice of such claim, (ii) permitting (subject to 28 USC 518) MobileIron to solely control and direct the defense or settlement of such claim, provided MobileIron shall not settle any claim in a manner that requires Customer to admit liability or pay money without Customer's prior written consent, and (iii) providing MobileIron all reasonable assistance in connection with the defense or settlement of such claim, at MobileIron's cost and expense.

17. Support and Maintenance Services. Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.

18. Warranties.

a. SaaS Product. MobileIron represents and warrants to Customer that the SaaS Product materially conforms to the specifications specified in the relevant Documentation. Customer must notify MobileIron of any warranty deficiencies within thirty (30) days from the provision of the deficient SaaS Product. Customer's sole and exclusive remedy and the entire liability of MobileIron for MobileIron's breach of this warranty will be for MobileIron, at its option, to (i) repair such SaaS Product (and/or deliver new applicable Software) or (ii) terminate the applicable License Term and refund any prepaid, unused subscription fees paid to MobileIron for the unused period of any such terminated License Term.

b. Professional Services. Customer may order professional services from MobileIron. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by MobileIron to Customer, MobileIron represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer's sole and exclusive remedy and the entire liability of MobileIron for MobileIron's breach of this warranty will be for MobileIron, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

c. Exclusions. The express warranties do not apply if the applicable SaaS Product(i) has been modified, except by or at the direction of MobileIron, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

d. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE SAAS PRODUCT, AND SERVICES ARE PROVIDED "AS IS," AND MOBILEIRON PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MOBILEIRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

19. Term and Termination. The access rights granted herein with respect to the SaaS Product shall remain effective until the License Term for the relevant SaaS Product expires or the license for the relevant SaaS Product is terminated. This Agreement shall remain effective until the earliest of termination in accordance with this Section 10, or expiration of the applicable License Term. If MobileIron agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days' written notice of a material breach by the other party (or three (3) business days in the case of a failure to pay), unless the breach is cured within the notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. In addition, Sections 1, 3-7, and 9-12, and all liabilities that accrue prior to termination shall survive expiration or termination of this Agreement for any reason. For ninety (90) days after the expiration or termination of this Agreement, upon Customer's request, MobileIron shall permit Customer to access the SaaS Product solely to the extent necessary for Customer to retrieve applications uploaded to such SaaS Product by Customer. After such 90-day period, MobileIron may delete all Customer Data in MobileIron's possession or control. Any dispute regarding a termination for breach under this section, will be resolved in accordance with the Contract Disputes Act.

20. Limitation of Liabilities. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY), OR CUSTOMER'S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO MOBILEIRON FOR THE RELEVANT SAAS PRODUCT, OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF
General:

a. Export/Import. The SaaS Product and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.

b. U.S. Government Rights. U.S. Government Rights. The Software and Documentation are “commercial items” as that term is defined at FAR 2.101. If Customer is the U.S. Federal Government (Government) Executive Agency (as defined in FAR 2.101), MobileIron provides the Software and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with MobileIron to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Software and Documentation and return the Software and Documentation and any other software or technical data delivered as part of the Software and Documentation, unused, to MobileIron. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

c. In-Licensed Materials and Open Source. The SaaS Product may contain or may interoperate with software services or other technology that is not owned by MobileIron but has been licensed to MobileIron by a third party or that is available under open source or free software licenses (“In-Licensed Materials”). The In-Licensed Materials may be subject to additional terms and conditions, as identified on Schedule A, attached hereto or as otherwise made available to Customer. Such terms and conditions are incorporated by reference herein. To the extent MobileIron uses open source software in its SaaS Product, the applicable licenses shall not restrict the license rights granted to Customer under this Agreement or impose further obligations or restrictions upon Customer, provided Customer uses the SaaS Product in accordance with this agreement.

d. Governing Law and Jurisdiction. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with the Federal common law of the United States and where there is no Federal common law, the laws of the State of California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state and federal courts in Santa Clara County, California, and the parties agree to service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply. The foregoing is subject to the Contract Disputes Act.

e. Assignment. Neither party may assign this Agreement without prior written consent of the other party, provided however subject to FAR 42.12, either party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

f. Data Communications. MobileIron shall only collect, access, use, store, safeguard, disclose and transfer (“Process”) Personal Information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the SaaS Product and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights, and individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. “Personal Information” means any information relating to an identified or identifiable individual user that is obtained by or communicated to MobileIron by Customer in performance of MobileIron’s obligations under this Agreement. MobileIron collects, analyzes, and uses aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. MobileIron may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.

g. Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting MobileIron’s or its suppliers’ intellectual property rights in the SaaS Product or either party’s Confidential Information may cause irreparable injury to such party for which monetary damages would be an inadequate remedy and the non-breaching party shall be entitled, to the extent permitted under Federal procurement law, to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

h. Publicity. MobileIron may publicly disclose that Customer is a customer of MobileIron and a licensee of the SaaS Product, including in a list of MobileIron customers and other promotional materials, however, MobileIron will not state or imply that Customer endorses any MobileIron product or service.

i. Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

j. Waiver & Severability: Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.
MobileIron and Customer have entered into one or more agreement(s) relating to the use and license of MobileIron software, which may contain In-Licensed Materials (the "Customer Agreement"), and the following terms and conditions shall apply.

I. IN-LICENSED MATERIALS

The software licensed under the Customer Agreement may contain or be provided with the In-Licensed Materials listed below. Such In-Licensed Materials shall be deemed "Software" (and subject to the same terms and conditions applicable to "Software") under the Customer Agreement notwithstanding anything to the contrary therein; provided, however, in connection therewith, additional or different terms are applicable as identified below. In-Licensed Materials shall have the meaning set forth in the Customer Agreement if defined therein; otherwise "In-Licensed Materials" means software, services or other technology software that is not proprietary to MobileIron but has been licensed to MobileIron and is contained in or may interoperate with the Software.

A. MobileIron "Silver" or "Gold" Bundle, also sold as Core:

1. **Core**

   - **Cell Tower Information** (only applies to Customers outside the United States). If Customer is provided any cellular tower identification information with associated latitude and longitude location information, Customer agrees that neither it nor its end users will use such latitude and longitude location information to create a latitude/longitude lookup database for cellular towers.

2. **SMS Messaging**

   - MobileIron disclaims all warranties and indemnities in connection with theSplunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities related to the MobileIron Core or MobileIron Cloud product. (a) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities related to the MobileIron Core or MobileIron Cloud product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities related to the MobileIron Core or MobileIron Cloud product. (d) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities related to the MobileIron Core or MobileIron Cloud product.

3. **Microsoft® Exchange Activesync**

   - (a) With respect to Microsoft® Exchange Activesync, the provision of this service (or software, as applicable) to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any smartphone or other device software that you use to access this service (or to access the functionality provided by software, as applicable). (b) With respect to Microsoft® Exchange Activesync, use is limited to internal use (including such use by agents or contractors exclusively on Customer's behalf) as part of the Core offering for the sole purpose of managing hand-held devices of Customer's employees, agents and/or contractors.

4. **Email+**

   - (a) "Email+ Device Software" means MobileIron's Email+ client device email software delivered by MobileIron to Customer, including any updates, modifications or upgrades of the same delivered to Customer during the term of the Agreement. (b) "EAS-Enabled Server" means (i) Microsoft Exchange server 2003, 2007, 2010 or any subsequent version thereof released during the term of the Agreement, (ii) any Microsoft owned or operated server that provides Windows Live Hotmail services, and (iii) any server software licensed by Microsoft to implement the Microsoft Exchange ActiveSyncTM Protocol. (c) MobileIron grants to Customer a non-exclusive right to use the Email+ Software (in object code form) on (i) in mobile phones, smartphones, laptops, or tablets that are managed by MobileIron's Software and (ii) for Customer's use with services provided by EAS-Enabled Servers.

5. **Splunk Universal Forwarder**

   - (a) The Splunk Universal Forwarder may forward data generated by the MobileIron Core product to Splunk Enterprise, a separate third party product not licensed or distributed by MobileIron. In order to be licensed to use the Splunk Universal Forwarder, Customer is required to obtain a license to Splunk Enterprise, directly or indirectly, from Splunk Inc. (b) Customer may not use any part of the Splunk Universal Forwarder, including third party code, in a manner not related to the MobileIron Core product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities related to the Splunk Universal Forwarder.

6. **Mobile@Work In-House App SDK**

   - (a) MobileIron Mobile@Work In-House App SDK is a custom SDK designed to allow Customer to brand Mobile@Work with Customer's own branding. MobileIron offers this SDK without any additional charge. Use by Customer is optional and deemed acceptance of the terms below. (b) MobileIron is willing to license this SDK on the same terms and conditions as "Software," except that: (i) Customer may only use this SDK to brand Mobile@Work with its own branding; (ii) Customer may distribute its branded Mobile@Work application through its enterprise AppStore; and (iii) MobileIron will only support the current version of this SDK and the immediately preceding version for 6 months following the release of the current version.

B. MobileIron "Platinum" Bundle (includes the terms and conditions for the MobileIron "Silver" and "Gold" Bundle as well as the additional terms below):

1. **MobileIron Help@Work for iOS**

   - (a) MobileIron Help@Work for iOS is a custom SDK designed to allow Customer to develop the Help@Work for iOS app, which will allow the Customer’s help-desk administrator to remotely view the screen of a managed iOS device, while working with the individual device-holder on troubleshooting workflows.

2. **Authorized Developer**

   - Customer represents and warrants that it has a valid Apple iOS Developer Program Enterprise License Agreement and hereby appoints MobileIron as an Authorized Developer under such agreement solely in connection with MobileIron's provision of Help@Work for iOS to Customer.

3. **Help@Work for iOS Display Finder**

   - If Customer at its option chooses to download the Help@Work for iOS Display Finder component, Customer will be required to accept the accompanying Apple end-user software license agreement (EULA), which solely governs the Apple software included therewith.

4. **ServiceConnect Integrations**

   - (a) ServiceConnect Integrations are third party modules provided by MobileIron that integrate MobileIron Core or MobileIron Cloud with separate third party products and/or services not licensed or distributed by MobileIron (e.g. ServiceNow or Splunk). In order to be licensed to use a ServiceConnect Integration, Customer is required to obtain a license to the relevant third party product or service, directly or indirectly, from the third party ("Underlying Third Party"). (b) Customer may not use any part of any ServiceConnect Integration, including third party code, in a manner not related to the MobileIron Core or MobileIron Cloud product. (c) Customer agrees that the Underlying Third Party does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of any ServiceConnect Integration and that the Underlying Third Party shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to Customer’s use of or reliance upon any ServiceConnect Integration. (d) MobileIron disclaims all warranties and indemnities in connection with the ServiceConnect Integrations and the third party product or services on which the ServiceConnect Integrations run. The Underlying Third Party makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to any ServiceConnect Integration. (e) The Underlying Third Party may, at any time and for any reason, discontinue its product or service, or discontinue or disrupt interoperability with the ServiceConnect Integration. MobileIron shall have no liability for any such discontinuance or disruption.
MOBILEIRON, INC.
Schedule B: Support & Maintenance Agreement
(version May 26, 2016)

If Customer has paid fees to obtain support and maintenance services directly from MobileIron, this Support and Maintenance Agreement (“SMA”) applies to such support and maintenance services. If Customer has paid fees to obtain support and maintenance services directly from an authorized reseller, the terms regarding support in this SMA shall not apply and shall instead be determined between Customer and the relevant authorized reseller, and the terms regarding maintenance are set forth in Section 3 below.

5. Definitions.
   a. “Designated Support Contact” means any Customer employee appointed by Customer who has been trained and certified by MobileIron to be a primary Customer contact with MobileIron for support services.
   b. “Direct Support Case Pack” means a direct support package that limits the number of Incidents for which the Customer is able to obtain direct support from MobileIron.
   c. “Incident” means when the SaaS Product does not seem to materially perform in accordance with the specifications specified in the relevant Documentation.
   d. “Response” means when MobileIron support personnel have (i) triaged the Incident, (ii) contacted Customer, and (iii) begun initial troubleshooting on the Incident.

   a. Support and Trouble Tickets. During the License Term, MobileIron shall use commercially reasonable efforts to provide support services to Customer, as described below. The Designated Support Contact may report Incidents to MobileIron through MobileIron’s Support Portal (available at https://help.mobileiron.com) or support telephone helpline, and thereafter, the parties may cooperate to address the Incidents via email, telephone or the Support Portal. MobileIron shall provide Customer with a trouble ticket number that Customer can use to track the status of Incidents. MobileIron may close the trouble ticket without further responsibility if Customer fails to respond to a request for additional information or to confirm that the trouble ticket is resolved within ten (10) days of MobileIron’s request or receipt of a patch or workaround (as applicable). Support services for the SaaS Product are available for twenty-four hours per day and seven days per week, unless the Customer has purchased a Direct Support Case Pack, in which case support services are available during business hours, which are 6 am-6 pm pacific, Monday through Friday (excluding holidays).
   b. Initial Response Times for Technical Support Issues. MobileIron shall provide Responses for Incidents that have been properly reported through the Support Portal in accordance with the table below. The Response times set forth below shall not apply to the Direct Support Case Pack:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Initial Response Time for Standard SaaS Subscription</th>
<th>Initial Response Time for Premium Plus Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A severity one (1) issue is a catastrophic production problem which may severely impact Customer's production systems or that causes Customer's production systems to go down or not function. There may be a loss of production data and no procedural work around exists.</td>
<td>1 hour</td>
<td>30 minutes</td>
</tr>
<tr>
<td>2</td>
<td>A severity two (2) issue is an issue where Customer's production systems are functioning but does so in a severely reduced capacity. The situation causes significant impact to portions of Customer's business operations and productivity. The systems are exposed to potential loss or interruption of service, including disruption of Customer's High Availability Configuration.</td>
<td>4 hours</td>
<td>2 hours</td>
</tr>
<tr>
<td>3</td>
<td>A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss. This issue impairs some operations but allows Customer to continue to function. This may be a minor issue with limited/no loss of functionality or impact to Customer's operation and there is an easy circumvention or avoidance by the end user. This includes errors in Documentation.</td>
<td>1 business day</td>
<td>1 business day</td>
</tr>
<tr>
<td>4</td>
<td>A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.</td>
<td>5 business days</td>
<td>5 business days</td>
</tr>
</tbody>
</table>

b. Limitations. MobileIron shall have no obligations under this Section 2: (i) if the Incident cannot be reproduced by MobileIron, (ii) if the SaaS Product has been modified or repaired, except by or at the direction of MobileIron, (iii) if the SaaS Product has not been installed, used or maintained in accordance with the Documentation, (iv) the SaaS Product is used with equipment, products or systems not supplied by MobileIron, (v) Customer does not permit MobileIron timely access to the logs or to perform remote troubleshooting sessions on the affected server or component, as reasonably requested by MobileIron, and/or (vi) for information or data contained in, stored on or integrated, with any SaaS Product. MobileIron’s obligations to provide maintenance for software installed on Customer’s premise (e.g., Sentry or Connector) shall apply only to the current shipping release of the Software and any prior release for one (1) year after such prior release has been superseded by a subsequent shipping release. (For example, if Sentry shipping version 5.0 is released in January 2016, version 5.1 is released in June 2016, and version 5.2 is released in December 2016, MobileIron shall support version 5.0 until June 2017, version 5.1 until December 2017, and version 5.2, assuming version 5.2 has not been superseded yet.)
7. **Maintenance Services.** During the License Term, MobileIron (or authorized reseller, if applicable) shall make available to Customer all Updates to the extent generally released to other MobileIron customers that purchased the same maintenance services. Such maintenance services shall apply only to the current shipping release of the SaaS Product and, for security fixes only, the immediately prior release.

8. **General.** MobileIron may revise the terms of this SMA, provided that: (a) such revision is made to its standard SMA terms made generally available to other customers, (b) MobileIron provides written/email notice of such revision at least sixty (60) days prior to the expiration of the then-current Support & Maintenance Term, (c) such revisions only apply to renewal terms, and (d) renewal is subject to mutual agreement. Any delay or failure in the performance by MobileIron (including in SaaS Product availability) shall be excused if and to the extent caused by a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of MobileIron, including but not limited to acts of God (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo, rebellion, revolution, insurrection, military or usurped power, civil war, acts or threats of terrorism, riots, strikes or labor disputes (excluding by MobileIron employees) (“Force Majeure”).
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Multivista Franchise Systems, LLC ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

e) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

f) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

g) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

a) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

b) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

e) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

f) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the
commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amounts of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

MULTIVISTA

MULTIVISTA LICENSE, WARRANTY AND SUPPORT TERMS
Service Descriptions
This Attachment A describes below combines Contractor’s state-of-the-art Multivista indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones. The Multivista system will utilize actual construction drawings, making such drawings interactive and accessible anywhere through a secure on-line interface. For all documentation referenced herein, indexing and navigation is organized by both time and location throughout the Project.

Site Survey and Progressions Sets:
“Progression” photo sets are performed at pre-determined intervals throughout the duration of construction. Progression photos broadly track all aspects of construction through time.

The Site Survey and Progression Sets are generally included in all subscriptions to the Multivista system. They are critical tools for the communication and project management aspects of all product types.

- **Site Survey (Pre-Construction):** The pre-construction site survey is a one-time shoot that provides coverage of the site and its immediately surrounding area to carefully memorialize conditions before a project begins.

- **Exterior Progression Shoots:** Exterior Progression photos are taken from key perspectives along site perimeters and 360 degrees around each building envelope during erection. Exterior progressions track the construction of building elevations and all work within the immediate vicinity of the exterior of the building, including some site work. Exterior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection. Exterior progression documentation typically begins at substantial framing, and not at commencement of site work. Exterior progressions can begin at commencement of site work for the purpose of broadly capturing site work upon request.

- **Interior Progression Shoots:** Interior Progressions track the interior improvements from when interior work begins (typically, at the commencement of stud-work) to completion. Interior Progressions broadly track the improvements from logical perspectives. Interior Progressions are designed to provide comprehensive coverage of the various trades coming together over time. Interior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection.

**Detailed Sets (“Exact-Builts®”):**
Detailed photo sets serve as “visual as-builts” which are performed at critical milestones during construction. They offer a higher concentration of photos and perspectives than the Progression shoots and/or focus on details of particular interest or importance to the Ordering Activity.

- **Pre-Slab Exact-Builts®:** This process will include overlapping images of all roughed-in MEP, cabling systems and other structural components within the building envelope(s), post inspection (where necessary), just prior to the concrete being poured.

- **Interior MEP Exact-Builts®:** Mechanical, Electrical, Plumbing (MEP) and all other systems in walls and ceilings will be documented post-inspection and pre-insulation, sheet rock or dry wall installation. This process provides a high concentration of overlapping coverage allowing for all finished systems to be viewed in great detail. This Exact-Builts® sweeps the entire project: every wall and every ceiling, on every floor of every building, throughout the entire Project. Note that this will not capture pre-slab, site, or in-slab-on-deck systems or other “horizontal” MEP work.

- **Interior Finished Condition Exact-Builts®:** At Certificate of Occupancy or other “finished” milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

- **Elevation Exact-Builts®:** Documentation of the entire building and skin capturing all exterior facades of building, to include windows and exterior skin to be determined by the Ordering Activity.

**Custom Exact-Builts®:**
These Exact-Builts® shoots are project-specific Detailed Sets that are not generally included in standard subscriptions to the service, but can be added to scope upon request.

- **Existing Condition Exact-Builts®:** At Certificate of Occupancy or other “finished” milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

- **Slideshows:** Slideshows capture miscellaneous occurrences or conditions while a photographer is on-site to perform any other shoot in the Order. These conditions are those that do not fit neatly into the building envelope interface (i.e., materials stored on site). Slideshows are not linked to architectural plans in the same manner as the formal shoots; however, they will be dated, labeled and stored on the Ordering Activity's interface. Thus, all of Ordering Activity’s information remains in one “place.” Owner and Superintendent photograph collections of critical events or conditions may also be provided to Contractor for incorporation into the Slideshow collections.

**Web Camera Hosting Packages**
**Video Services:**
Contractor uses high definition video equipment to document “As Delivered” construction events. Documentation comprises of Video recordings of dynamic events during the construction process. This deliverable may include but not limited to owner or process training videos, specific milestones or events and inspections. The deliverable includes post production editing. The final deliverable will be on a DVD or hard drive format and is not hosted on the Contractor’s Multivista website or server.

**Additional Items**
Contractor will accommodate, without charge, limited additional items that may be captured during our scheduled visits and included in the Slideshow section of our service. Additional items requested which are of significant scope, may be ordered separately.

**Miscellaneous**

1. **SERVICES:** Contractor shall provide professional services in accordance with the Order. Contractor will begin a Project Set-Up only after receipt of electronic plans from the architect of the Project in an acceptable format. Thereafter, Contractor requires at least ten (10) business days for Project Set-Up prior to the first shoot contemplated by the Order.

2. **DETAILED PHOTO SETS:** Because of the volatile nature of construction schedules, IT IS THE SOLE RESPONSIBILITY OF THE ORDERING ACTIVITY TO PROVIDE CONTRACTOR AT LEAST 24 HOURS NOTICE PRIOR TO THE TIME THAT A DETAILED SET MUST BE PERFORMED. To the extent look-ahead schedules are made available to Contractor, Contractor will endeavor to communicate with the Project owner’s representative or superintendent regarding upcoming Detailed Set shoots. However, Contractor will not be responsible if such Detailed Sets are not performed due to lack of notice pursuant to this provision.

3. **AGENT/OWNER’S REPRESENTATIVE:** Ordering Activity must designate a specific person or persons authorized to and responsible for scheduling site visits and Detailed Shoots.

4. **STANDARD OF CARE:** Services provided by Contractor under this Attachment A will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor makes no warranties or guarantees, either expressed or implied, of the fitness of its documentation for any particular use.

5. **OWNERSHIP OF DOCUMENTS:** Contractor makes no warrants as to the professional nature of the photograph other than to capture the construction progress. Notwithstanding the foregoing, the underlying proprietary software, processes, procedures and all other proprietary information used to create these instruments of service, including all intellectual property rights associated therewith, shall at all time remain the sole property of Contractor and/or its suppliers.

6. **SITE VISITS/OBSERVATION:** Contractor shall visit the project and/or construction site at appropriate intervals and take photos of the construction progress. Visits to the project site and observations made by Contractor as part of services provided during construction under this Attachment A shall not make Contractor responsible for monitoring of the work. Contractor employees will report to the site office prior to working on site. The site superintendent shall be the designated person granting permission onto the site in order to ensure safe access for Contractor employees.

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached NEC Corporation of America ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation), 31 U.S.C. § 3727 (assigning to the Department of Justice (DOJ), and 26 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the
commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renews.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

l) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1. DEFINITIONS

1.01 "CPU" means a central processing unit in the System or SubSystem.
1.02 "Computer Program" means any instruction or instructions in object-code format for controlling the operation of a CPU.

1.03 "Licensed Product" means:
   a: The Computer Program furnished hereunder to the Ordering Activity (herein also referred to as “LICENSEE”).
   b: The Computer Program manuals, documentation and any other material for the licensed Computer Program.
   c: (i) “PBX” as used herein shall mean hardware PRODUCTS. (ii) “PBX Applications” as used herein shall mean computer software which executes in conjunction with the PBX hardware PRODUCTS utilizing external interfaces and include the following applications.
      - Global Navigator
      - Unified Communications for Business (UCB)
      - Unified Communications for Enterprise (UCE)
      - UM Products (UM8700, UM4730, UM8500, UM8000)
   d: (i) “ECP” as used herein shall mean UNIVERGE® SV7000, UNIVERGE® SV8500 and NEC Sphericall® hardware PRODUCTS. (ii) “Applications” as used herein shall mean PBX Applications as defined in Section 1.03 (c) above.

THE TERM "LICENSED PRODUCT" DOES NOT MEAN OR INCLUDE THE SOURCE CODE FORMAT FOR THE COMPUTER PROGRAM.

2. GRANT OF RIGHTS

2.01 Contractor hereby grants the LICENSEE, and the LICENSEE hereby accepts, a personal, non-transferable and non-exclusive right to use the Licensed Product on 1 CPU at a time, or a single system where multiple CPU's are provided in the configuration, solely for its internal business purposes. The LICENSEE understands that the Licensed Product furnished to the LICENSEE is furnished solely for use in conjunction with the related hardware Licensed PRODUCTS sold by Contractor to LICENSEE. The LICENSEE has no right to use the Licensed Product so furnished on any CPU other than that such CPU or for any purpose not specified herein.

2.02 LICENSEE and Contractor expressly acknowledge and agree that NEC and/or NEC’s licensors retain ownership of and title to their respective portions of the License Product and no right, title or interest to the intellectual property in the Licensed Product is hereby transferred to the LICENSEE or Contractor, except as expressly granted herein.

2.03 The LICENSEE shall not transfer possession of the Licensed Product, nor any rights conferred herein to any third party, except to a third party who acquires title to the LICENSEE’s related hardware Licensed PRODUCTS, provided such transferee has executed and provided to NEC, a signed copy of this Attachment A and has tendered to NEC, the then-current license transfer fee.

2.04 LICENSEE hereby agrees that it shall not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the Licensed Product, except to the extent that such modification capability is an intended feature of the Licensed Product.

3. LIMITED WARRANTY AND REMEDIES

3.01 a: For a period of 14 months from date of shipping to the LICENSEE’S site, Contractor warrants that the PBX and the UNIVERGE® SV8500 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

   b: For a period of 120 days from date of shipping to LICENSEE’s site, Contractor warrants that the UNIVERGE SV8500 software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

   c: For a period of 90 days from date of shipping to the LICENSEE’s site, Contractor warrants that the Applications software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

   d: For a period of 90 days from date of shipping to the LICENSEE’S site, Contractor warrants that the UNIVERGE® SV7000 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

   e: For a period of 90 days from date of shipping to the LICENSEE’S site, Contractor warrants that the NEC Sphericall® PRODUCTS software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

   f: For a period of 14 months from date of shipping to the LICENSEE’S site, Contractor warrants that the UNIVERGE® SV8500 hardware and the NEC Sphericall® hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

   g: For a period of 90 days from date of shipping to the LICENSEE’S site, Contractor warrants that the Unified Communications Enterprise (UCE), Unified Communications Business (UCB), CallCenterWorX and Global Navigator software will substantially conform to published performance specifications
applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

h: For a period of 180 days from date of shipping to the LICENSEE’s, Contractor warrants that the Unified Messaging (UM8700, UM4730, UM8500, UM8000) software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

3.02 Contractor’s liability for any Licensed Product which is shown to be defective during its warranty period is limited to:

a: replacing the Licensed Product or part thereof with a functionally equivalent Licensed Product or part,

b: repairing the Licensed Product, or

c: issuing credit for the depreciated value of the Licensed Product

The choice of which of the above warranty remedies to utilize concerning any particular Licensed Product shall be Contractor’s.

3.03 In the event that any Licensed Product is shown to be defective during the warranty period, the LICENSEE, who purchased or leased such Licensed PRODUCTS, shall:

a: notify Contractor promptly in writing of any claims,

b: provide Contractor and/or NEC, with an opportunity to inspect and test the Licensed PRODUCTS claimed to be defective, and

c: (if repair or replacement of the Licensed Product is selected) return the Licensed Product to Contractor or NEC, in accordance with instructions provided.

3.04 The above warranty excludes coverage for Licensed PRODUCTS which were installed, repaired or maintained by an unauthorized service provider or which were subjected to misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition (including, but not limited to, lightning or water damage), storage, transportation or handling, unless caused by NEC or its authorized representative.

3.05 THE LICENSED PRODUCT WARRANTY CONTAINED IN THIS ATTACHMENT A IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SOFTWARE PRODUCTS.

4. TERMINATION

4.01 Upon termination, the LICENSEE shall immediately discontinue the use of the Licensed Product and shall return all copies of the Licensed Product to Contractor.

5. REGISTRATION AND ACTIVATION

5.01 PRODUCT LICENSES delivered through the electronic licensing portals offered by NEC will be required to be registered and activated prior to the licenses being used or technical support being provided.

5.02 At the time of LICENSE registration, the Contractor is required to provide NEC with accurate LICENSEE contact information.
EC AMERICA RIDER TO PRODUCT SPECIFIC TERMS AND CONDITIONS
(For U.S. Government End Users)
(V31-Oct-2019)

1. **Scope.** This rider (“Rider”) and the attached LinkRunner, LLC d/b/a NetAlly (“Manufacturer”) product specific end-user terms establish the terms and conditions enabling EC America (“Contractor” and/or EC America”) to provide Manufacturer’s information technology products and services to Ordering Activities, as defined in the Schedule Contract, under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”) with the U.S. Government General Services Administration (“GSA”) (hereinafter Manufacturer, EC America, and GSA may individually be referred to as a “Party” or collectively, as the “Parties”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer’s Specific Terms, as defined below, attached hereto as Attachment A, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and, whereas, the Parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, therefore, the Parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that the Manufacturer Specific Terms are consistent with U.S. Federal Law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions - Commercial Items. To the extent any Attachment A Terms are inconsistent with U.S. Federal Law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the Parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes
the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the
fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third-Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
{End}

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These End-User Terms and Conditions ("General T&Cs") are by and between the eligible Ordering Activity under GSA Schedule contracts set forth in the applicable Order ("Company" or "Ordering Activity"), as further defined below, and sets forth the terms, conditions, rights and restrictions for which LinkRunner, LLC d/b/a NetAlly, and any of its subsidiaries and affiliates (collectively or individually referred to as "NetAlly") is willing to sell devices ("Hardware") and license NetAlly's proprietary software, as well as any firmware residing on such Hardware, ("Software") (The Hardware and Software may be collectively referred to as the "Product(s)"), and provide maintenance and technical support services ("Maintenance"), to Company. Unless otherwise governed by a signed contract between Company and NetAlly, only these General T&Cs will apply to any Orders made for NetAlly’s Products. NetAlly’s provisioning of Products, Maintenance or any other services to Company is expressly contingent upon Company’s acceptance of these General T&Cs.

Receipt without return of any Products from NetAlly by Company shall be deemed as acceptance of this Order and shall also constitutes Company's confirmation that the Products descriptions, quantities, term, and prices set forth in the Order in accordance with the GSA Schedule Pricelist accurately represent Company's intended purchase. All additional and conflicting terms and conditions presented with or in any communication, shall be deemed null and void.

1. Definitions.

“API(s)” means the software application interfaces and workflow methods made generally available by NetAlly in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

“Company” means an eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document, which has entered into a commercial agreement with NetAlly, allowing for the licensing or re-licensing of Software or distribution, sale, or resale of Products and Service.

“Company Data” means information that Company uploads or uses in conjunction with Company’s use of the Products.

“Data Protection Act” means the Health Information Portability and Accountability Act (HIPAA) (29 U.S. Code § 1181, et seq.), Gramm Leach Bliley Act (GLBA) (15 U.S Code § 1681), General Data Protection Regulation (GDPR) (EU 2016/679), and other applicable regulations which seek to protect the processing and storage of personal information.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

“Evaluation Product” means software that contains a license key, which disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Product unusable.

“Order” means the combination of Company’s P.O., a Quote issued by NetAlly or a NetAlly Company, and these General T&Cs.

“Personal Data” means any information relating to an identified or identifiable natural person (hereafter a “Data Subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

“P.O.” means a purchaser order or document, in tangible or
intangible form (e.g. .rtf, .pdf, formats, etc.), issued by Company indicating Company’s acceptance of the Quote and these General T&Cs, without regards to any conflicting terms and conditions presented therein, except with respect to price, quantity, and location of Products or Services.

“Quote” means the document under which NetAlly offers for sale and licenses its Products, Maintenance, and other services.

“Services” means Maintenance as well as any other services offered by NetAlly to Company from time to time.

2. Shipment & Delivery Terms. NetAlly ships all Products, via ground shipment hereunder FOB Destination. Unless otherwise agreed to by the parties, all shipments will be made using the carrier designated by Company. If Company does not designate a carrier, NetAlly reserves the right to choose a carrier at Company’s expense. For Software available for electronic download, delivery will be deemed to have occurred once NetAlly has made the Software available for download by Company or Company’s designate agent or representative. Unless otherwise stated conspicuously on the face of the applicable Order, NetAlly reserves the right to fulfill Orders via multiple shipments. For all Products shipped internationally, Company will be the importer of record. Company agrees that it will not remove any NetAlly General T&Cs or other agreement from the NetAlly Product(s), and/or associated packaging. All costs incurred by Company will be in accordance with the GSA Pricelist.

3. License Grant and Restrictions. Subject to payment of the applicable license fee and the terms set forth in an applicable Order, NetAlly grants Company a limited, non-exclusive, non-transferable, revocable license to use the Software and the Documentation for Company's own internal business purposes.

   (a) Evaluation License: NetAlly hereby grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Evaluation Product set forth in the applicable NetAlly Evaluation Request Form solely for internal testing, evaluation, or demonstration purposes. If Company chooses not to purchase a license for the Evaluation Product, the Evaluation Product must be removed from Company’s system(s) and all permitted copies of such Evaluation Product immediately destroyed. A Return Materials Authorization
number ("RMA ") for any Hardware Evaluation Product must be obtained prior to return of such Product.

(b) **Pre-Released Products.** If the Product Company has received with this license is not yet commercially available ("Pre- Released Product"), then NetAlly grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Pre-Released Product and the associated Documentation, if any, as provided to Company by NetAlly solely for internal evaluation purposes. NetAlly may terminate Company’s right to use the Pre-Released Product at any time at NetAlly’s discretion. Company’s use of the Pre-Released Product is limited to thirty (30) days unless otherwise agreed to in writing by NetAlly. Company acknowledges and agrees that (i) NetAlly has not promised or guaranteed to Company that the Pre-Released Product will be announced or made available to anyone in the future; (ii) NetAlly has no express or implied obligation to Company to announce or introduce the Pre-Released Product; (iii) NetAlly may not introduce a product similar to or compatible with the Pre-Released Product; and (iv) any use of the Pre-Released Product or any product associated with the Pre-Released Product is entirely at Company’s own risk. During the term of these General T&Cs, if requested by NetAlly, Company will provide feedback to NetAlly regarding use of the Pre-Released Product. Company will not disclose any features or functions of any Pre-Released Product until NetAlly makes the Pre-Released Product publicly available.

(c) **API License.** NetAlly grants Company a limited, non-exclusive, non-transferable revocable license to use the API, together with applicable documentation, any sample code, and any sample applications provided with the API, solely in connection with the Products for Company’s internal business purposes; provided that Company may not use the API in connection with developing a product or service that competes with Products.

(d) **License Restrictions.** Except as required by law, Company will not, and will not cause or permit others to, derive the source code of the Software, or reverse engineer, decompile, or disassemble the Products. Company may not (i) create derivative works of the Software, (ii) lend, rent, lease, assign, sublicense, and/or make available through timesharing or service bureau the Software, or (iii) transfer the Software or provide third party access to the Software.

(e) **Third-party Technology.** The Products may contain embedded third-party technology ("Third-party Materials"). Such Third-party Materials are licensed for use solely with the Product. Third-party Materials are provided subject to the applicable third-party terms of use. Nothing herein shall bind the Ordering Activity to any Third-party Materials terms unless the terms are provided for review and agreed to in writing by all parties.

(f) **Ownership.** NetAlly and its third-party licensors retain all right, title, and interest in and to the Products, Third party Technology and/or APIs. Company retain all right, title and interest in and to the Company Data.

4. **Acceptable Use.** Company specifically agrees to limit the use of the Products and/or Services to those specifically granted in these General T&Cs. Without limiting the foregoing, Company specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion
thereof; (ii) modify, port, translate, localize or create derivative works of the Software; (iii) remove any of NetAlly’s, or its vendors, copyright notices and proprietary legends; (iv) use the Products to (a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violate any law, statute, ordinance, or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti- discrimination and/or false advertising); or (c) propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; and/or (v) file copyright or patent applications that include the Product or any portion thereof.

5. **Company & Personal Data.** During the Term, Company may provide to NetAlly Company Data. NetAlly may use Company Data in connection with the performance of its obligations under these General T&Cs. Company hereby agrees to strictly comply with any and all applicable Data Protection Acts with regards to the transfer, handling storage and processing of Personal Data. Company acknowledges and agrees that should Company transfer such Personal Data to NetAlly, or other third-parties, Company will serve as such Personal Data’s “Controller”, as set forth in the applicable Data Protection Acts. Further, in the event of a breach of Personal Data, attributed to Company’s actions or inactions in furtherance of these General T&Cs, in violation of the Data Protection Acts, Company shall promptly (i) take all necessary steps to curtail such breach; (ii) undertake all necessary actions to mitigate damages; (iii) provide the necessary notification and remediation, as set forth in the applicable Data Protection Act; and (iv) aid and assist in NetAlly’s efforts to do the same, at Company’s sole cost and expense.

6. **[Reserved]**

7. **[Reserved]**

8. **Warranties.** NetAlly warrants, for Company’s benefit alone, (i) that the Hardware will be free from material defects for a period of twelve (12) months following the date of shipment of the Hardware ("Hardware Warranty Period"); and (ii) the Software, will conform materially and substantially to the Documentation for a period of ninety (90) days following the date when first made available to Company for download ("Software Warranty Period"). The warranties set forth herein do not apply to any failure of the Software or Hardware caused by (a) Company’s failure to follow NetAlly’s installation, operation, or maintenance instructions, procedures, or Documentation; (b) Company’s mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) modifications or repairs not authorized by NetAlly; (d) use of the Products in combination with equipment or software not supplied by NetAlly or authorized in the Documentation; and/or (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside NetAlly’s reasonable control. NetAlly cannot and does not warrant the performance or results that may be obtained by using the Products, nor does NetAlly warrant that the Products are appropriate for Company’s purposes or error-free. If during the Software Warranty Period or Hardware Warranty Period, a nonconformity is reported to NetAlly, NetAlly, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware. THIS REMEDY IS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, AND NETALLY’S SOLE LIABILITY FOR A BREACH OF
WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 8, “WARRANTIES” NETALLY DISCLAIMS ALL WARRANTIES ON MERCHANDISE SUPPLIED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. [Reserved]

10. EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, AND/OR INCIDENTAL DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

11. ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

12. [Reserved]

13. Relationship with Third parties. The relationship between the parties established by these General T&Cs is that of independent contractors, and nothing contained in these General T&Cs shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other; (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking or franchise; (iii) allow Company to create or assume any obligation on behalf of NetAlly for any purpose whatsoever; or (iv) allow any customer, End-User, or other person or entity not a party to these General T&Cs to be considered a third-party beneficiary of these General T&Cs.


14.1 Modification. No modification of these General T&Cs shall be effective unless in writing and signed by both parties.

14.2 Severability & Survival. The illegality or unenforceability of any provision of these General T&Cs shall not affect the validity and enforceability of any legal and enforceable provisions hereof. Should any provision of these General T&Cs be deemed unenforceable by a court of competent jurisdiction then such clause shall be re-construed to provide the maximum protection afforded by law in accordance with the intent of the applicable provision. Any provision contained herein, which by its nature should survive the termination of these General T&Cs shall survive, including, but not limited to, Section 7 “Confidentiality”, 9 “Limitation of Liability & Exclusion of Consequential Damages”, 12 “Indemnification”, and 14 “General Provisions”.
14.3 **Assignment.** Neither party may assign any rights or delegate any obligations hereunder, whether by operation of law or otherwise, except with the prior written consent of the other party, which consent will not be unreasonably withheld. These General T&Cs binds the parties, their respective participating subsidiaries, affiliates, successors, and permitted assigns.

14.4 **Compliance & Export Controls.** Company shall comply fully with all applicable laws, rules, and regulations including those of the United States, and any and all other jurisdictions globally, which apply to Company's business activities in connection with these General T&Cs. Company acknowledges that the NetAlly Products and/or NetAlly Services are subject to United States Government export control laws. Company shall comply with all applicable export control laws, obtain all applicable export licenses, and will not export or re-export any part of the Products and/or Services to any country in violation of such restrictions or any country that may be subject to an embargo by the United States Government or to End-Users owned by, or with affiliation to, such countries embargoed by the United States Government.

14.5 **U.S. Government Use Notice.** The NetAlly Software is a “Commercial Item”, as that term is defined at 48 C.F.R. § 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. § 12.212. Consistent with 48 C.F.R. § 12.212, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government End-Users (a) only as Commercial Items and (b) with only those rights as are granted to all other End-Users pursuant to the terms and conditions herein. For some components of the Software as specified in the Exhibit, Attachment, and/or Schedule, this Software and Documentation are provided on a RESTRICTED basis. Use, duplication, or disclosure by the United States Government is subject to restrictions set forth in 48 CFR 52.227-14, as applicable.

14.6 **Anti-Corruption and Anti-Bribery.** Company will not make or permit to be made any improper payments and will comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the Organization for Economic Co-operation and Development (“OECD”) Convention on Anti-Bribery, and other applicable local anti-bribery laws and international anti-bribery standards. Company represents and warrants that it will not pay any commission, finder's fee, or referral fee, or make any political contribution, to any person in connection with activities on behalf of NetAlly.

14.7 **Applicable Law & Disputes.** The parties specifically agree that the U.N. Convention on the International Sale of Goods, the Uniform Computer Information Transactions Act (“UCITA”), and the International Commercial Terms issued by the International Chamber of Commerce (“Incoterms”) shall not apply to any and all actions performed by either party hereunder in furtherance of these General T&Cs. These General T&Cs and all resulting claims and/or counterclaims shall be governed, construed, enforced and performed in accordance with the laws of the Federal Laws of the United States of America, without reference and/or regard to its conflicts of laws principles.

14.8 **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).
149 Waiver. Each party agrees that the failure of the other party at any time to require performance by such party of any of the provisions herein shall not operate as a waiver of the rights of such party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

15. Notices. All notices under these General T&Cs shall be in English and shall be in writing and given to the address indicated upon the cover page and may be sent either by (i) registered airmail; (ii) overnight delivery through a reputable third-party courier; or (iii) via electronic mail (email) sent “read receipt” and “delivery receipt”. With respect to NetAlly’s receipt of electronic notice set forth in (iii) above such notice shall only been deemed received once Company receives a confirmation of “read receipt” and “delivery receipt” and such notice shall only be valid if sent to legal@netally.com.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached NetApp, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (MAY 2014). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NETAPP, INC.

PROFESSIONAL SERVICES TERMS

These Professional Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customers purchasing Professional Services directly from NetApp, the NetApp General Terms (attached herein) also apply. For Customers purchasing Professional Services from an authorized NetApp distributor or reseller, the NetApp Channel End User Terms (attached herein) also apply.

To the extent there is any conflict between these Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Terms will control and take precedence. These Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services.

1. DEFINITIONS. In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions shall apply:

1.1. Deliverables. Tangible materials or specific outputs expressly designated as Deliverables in the relevant Engagement Document.

1.2. Engagement Document. A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

1.3. IP Rights. Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, knowhow or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.4. Pre-Existing IP. IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Terms.

1.5. Professional Services. The consulting services to be provided by or on the behalf of NetApp as specified in an Engagement Document.

1.6. Professional Services Materials. Deliverables, materials, software, know-how, and/or information used, generated, created, developed or reduced to practice, including any modifications thereof or thereto, by or for NetApp during the provision of the Professional Services.

1.7. Professional Services Resource. A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

2. SCOPE OF SERVICES

2.1. Projects. NetApp will perform Professional Services in accordance with the Order Documentation, including the Engagement Document, and these Terms. NetApp may at its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services provided.

2.2. Change Orders. Changes to the Professional Services specified in a statement of work will not be effective unless a change request form has been executed by authorized representatives of both Parties and NetApp has received the applicable Order Documentation supporting the change.

2.3. No Unique Services. Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other NetApp customers. Any unique services requested by Customer shall be subject to separate written agreement. No custom development activity shall be performed as Professional Services.

2.4. No Superuser Access. In no event will Customer grant to a Professional Services Resource root or “superuser” access at a server or network level and NetApp will have no responsibility or liability for loss or damage that results from or is related thereto. Such services shall be subject to a separate written agreement.

3. FEES. An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for Professional Services rendered and any related payment schedules. Customer’s execution of an Engagement Document or NetApp’s acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

4. EXPENSES. Ordering Activity Licensee agrees to pay any travel expenses in accordance with FTR/JTR, as applicable. Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

5. DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT. In relation to Time and Material ("T&M") Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services, at an agreed Customer site or remotely, for the total amount of hours and/or days set forth in NetApp’s price quotation and Customer’s Purchase Order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of four (4) consecutive hours. For T&M Professional Services purchased on a daily basis, a “day” constitutes at least four (4) hours but not more than eight (8) hours in a single calendar day; or whenever aggregate overtime hours (those exceeding eight (8) hours on a calendar day), exceed four (4) hours but not more than eight (8) hours. T&M Professional Services will be available to Customer for one (1) year from the Purchase Order date Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

6. PROFESSIONAL SERVICES WARRANTY. NetApp warrants to Customer that the Professional Services will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. If the Professional Services materially fail to conform to this Professional Services warranty, NetApp will re-perform such Professional Services. This is Customer’s sole and exclusive remedy in relation to breach of warranty.
7. INTELLECTUAL PROPERTY RIGHTS. Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, and IP Rights embodied therein. In no event will Professional Services Materials be deemed to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a nonexclusive, worldwide, royalty-free, fully paid-up license to use such Pre-Existing IP and Confidential Information for the sole purpose of performing or producing the Professional Services and Professional Services Materials. Upon receipt of full payment, NetApp hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Professional Services Materials for Customer’s internal business purposes. Customer will not re-distribute the Professional Services Materials to any third parties without NetApp’s prior written consent.

8. DATA PROTECTION. Performance of Professional Services under these Terms may result in Customer providing NetApp access to personal data. NetApp does not need nor request access to personal data in order to provide Professional Services. In the event Customer does provide personal data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

9. TERMINATION; REMEDIES FOR NON-PAYMENT. Customer may terminate an Engagement Document for convenience upon thirty (30) days prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination, including all expenses and time and material costs incurred or expended by NetApp, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to perform, and, upon completion, will be entitled to full compensation for the completion of such Professional Services. If Customer fails to make payment in accordance with the payment terms, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately upon written notice to Customer if Customer commits a material breach of these Professional Services Terms.

SUPPORT SERVICES TERMS

These Support Services Terms (“Terms”) set forth the terms and conditions under which NetApp will provide Support Services to Customer. To the extent that there is any conflict between these Terms and those contained in the Master Purchase Agreement, these Terms will control and take precedence.

1. DEFINITIONS. In addition to the definitions set forth in the Master Purchase Agreement, the following definitions shall apply:


1.2. Business Day. Monday through Friday, 9:00 a.m. to 6:00 p.m. Customer local time, except: (i) In Japan, Business Day means Monday through Friday, 9:00 a.m. to 6:00 p.m.; and (ii) in the Middle East and Israel, Business Day means Sunday through Thursday, 8:00 a.m. to 5:00 p.m. Designated local holidays are not considered Business Days.

1.3. Customer Replaceable Unit (CRU). Any FRU which can be replaced by Customer following guidelines and documentation provided by NetApp.

1.4. Field Replaceable Unit (FRU). A component or disk in the Hardware, excluding filer heads, which can be replaced at a Customer location without pre-configuration by NetApp. FRUs will be new or equivalent to new, at NetApp’s reasonable discretion.


1.7. Software Updates. (i) Enhancements made generally available at no charge by NetApp to existing Software versions; (ii) Software releases made generally available by NetApp to resolve known issues with existing versions of Software; and (iii) Temporary software modifications developed for individual, known Software issues as part of the applicable Support Services.

1.8. Support Services. NetApp’s generally available technical support and maintenance services for Hardware and Software, as described on the NetApp Support Site.

1.9. Support Services Period. The period of time specified in the Order Documentation during which NetApp will provide Support Services.

1.10. Target Response Objective. The Target Response Objective for timing of delivery of Support Services.

2. SUPPORT SERVICES

2.1. Scope of Support Services. NetApp agrees to provide the Support Services purchased by Customer as set forth in the Order Documentation during the Support Services Period. On a case by case basis, and as explicitly set forth in the Order Documentation, NetApp may also offer Support Services in relation to Third Party Branded Products. In such cases, references to Hardware and Software in these Terms shall also be deemed to include Third Party Branded Products. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion.

2.2. Combined Use. Customer must purchase the same level of service entitlement for all components and controllers in a system. Customer will notify NetApp prior to any combined use of Hardware and Software initially purchased for use in separate systems, and will upgrade to the highest level of Support Services entitlement existing in the newly combined system. Customer also will pay any additional Support Services fees required by NetApp, as calculated in accordance with the Price List.

2.3. Out-of-Scope Services. The following services are not included in the scope of Support Services:

(a) Subject to Section 2.1 above, services related to third party products;
(b) Transit or relocation of Hardware and related services, including services to remediate any associated damage;
(c) Provision of accessories, batteries, supplies or replacement of disposable parts, including without limitation power cords, rack mounting kits and cables;
(d) Customer education, training and consulting services;
(e) Implementation or installation assistance for hardware and software not procured from a NetApp authorized source;
(f) Services related to any work performed at Customer’s site except as specified in the Order Documentation;
(g) Services relating to issues arising from Customer or third-party modifications, customizations, or enhancements to Software;
(h) Services relating to issues arising from a change in Customer’s system configuration which is not in conformance with the NetApp Interoperability Matrix located on the NetApp Support Site at http://support.netapp.com/matrix/mix/login.do; and
(i) Services relating to issues arising from Customer or third party error, use of software other than Software, or modification of Software.

2.4. Hardware and Software Warranty Disclaimers. All NetApp warranties related to Hardware and Software will be voided where:
(a) Hardware has been mishandled, altered, damaged or rendered inoperable (e.g., degaussed disk drives) due to willful or negligent acts or omissions, accident, force majeure, or operation of the Hardware other than as specified in the Documentation; (b) A solid state drive or flash device has been used in excess of its rated life as set forth in the Documentation and/or as determined by its original manufacturer; (c) Services have been performed by a person or entity other than NetApp or an authorized NetApp service representative in relation to the Hardware and Software, in the absence of a prior written agreement with NetApp; (d) A power surge or failure has occurred; (e) Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Site Requirements Guide at http://hwu.netapp.com; (f) Software or components, including without limitation, software or hardware, have been procured from a source not authorized by NetApp, and then combined with Products.

2.5. Support Services Warranty. NetApp warrants that for the duration of the applicable Support Services Period, Support Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. Customer's sole and exclusive remedy in relation to a breach of this warranty is a re-performance of the Support Services by NetApp.

2.6. Subcontracting. NetApp may use subcontractors to provide the Support Services under these Terms.

2.7. End of Availability and End of Support. The NetApp Service and Support Product Programs End of Availability Index, which is located on the NetApp Support Site, details information related to the last date on which Hardware or Software will be supported for quoting from NetApp ("End of Availability" or "EOA"), and the last date on which Hardware or Software will be supported by NetApp ("End of Support" or "EOS"). NetApp will not provide Support Services for any Hardware, or components thereof, or Software after the applicable published EOS date. In relation to Hardware running Software which has passed its EOS date, NetApp may require Customer to update to a supported version of Software as a prerequisite to NetApp continuing to provide Hardware Support Services.

2.8. Replacement of Hardware Components and Return Material Authorization. In the event the resolution of a support case initiated with the NetApp Technical Support Center ("TSC") is a Hardware failure, Customer will notify NetApp of its intent to return such Hardware within fifteen (15) calendar days of the support case resolution. Hardware replacement is subject to the Return Material Authorization ("RMA") procedure located on the NetApp Support Site at http://mysupport.netapp.com/NOW/products/rma/ Failure to return the Hardware components within the fifteen (15) days specified above or their return in a condition rendering them unsupportable under Section 2.3 above shall entitle NetApp to invoice Customer for the cost of the replacement Hardware components supplied, calculated in accordance with the Price List. Customer will ensure that the failed Hardware is free of any legal obligations or restrictions that could prevent its replacement and will return each CRU and FRU individually by separate shipment.

2.9. Support Included with Original and Extended Hardware Warranty. During the applicable Hardware warranty period, NetApp will provide Customer with access to 24/7/365 Remote Technical Support, delivery of replacement Hardware components and access to the NetApp Support Site. Customer will also have access to AutoSupport and the NetApp Remote Support Diagnostics Tool, as applicable. In relation to Support Services included with the Hardware warranty, NetApp will use reasonable commercial efforts to deliver replacement Hardware components by the next Business Day. Such delivery is subject to local country limitations, including but not limited to shipment cut-off times, and other factors beyond the reasonable control of NetApp.

2.10. Next Business Day Schedule. The cutoff time for next Business Day delivery of FRUs or CRUs and/or arrival of a NetApp Authorized Service Engineer is 3:00 p.m. local Customer time. Remote diagnosis completion and/or CRU/FRU ordering that occurs after 3:00 p.m. local Customer time, will be deemed completed on the following Business Day and shipment and/or arrival will be scheduled accordingly. (e.g., if diagnosis occurs after 3:00 p.m. on Monday, CRU/FRU ships Tuesday to arrive on Wednesday). 2.11. Onsite Support Services. If Customer has purchased onsite Support Services, it will receive such services as follows: When Customer initiates a technical support case with the TSC, a Technical Support Engineer ("TSE") will commence issue identification and repair as necessary. If the issue cannot be resolved remotely, and where the TSE and Customer jointly agree that onsite Support Services are necessary and appropriate, the TSE will dispatch an Authorized Support Engineer ("ASE") to the Customer site. The ASE will, at the direction of the TSC, work to diagnose and isolate the issue, make necessary changes and restore the normal operation of the systems. The TRO for onsite Support Services will be the same as that specified for replacement Hardware components in the Documentation. Subject to Section 2.13 below, in relation to onsite Software Support Services, NetApp reserves the right to define the most appropriate onsite resources to resolve the case and restore normal operation. In such cases, NetApp will communicate with Customer the estimated time of arrival for the ASE,
sufficient specificity the nature of the Software issues Customer is experiencing and the circumstances in which they occur; (c) reproduced the Software issue such that it can be confirmed and evaluated by NetApp; (d) made no changes, additions, or modifications to the Software, directly or indirectly; and (e) installed the Software in an infrastructure/environment that adheres to the published NetApp Interoperability Matrix on the NetApp Support Site.

2.16 AutoSupport. AutoSupport data is deemed to be NetApp Confidential Information.

3. CUSTOMER RESPONSIBILITIES

3.1. Customer Contacts. Customer will designate up to three (3) technically qualified employees to serve as Customer’s primary points of contact in relation to the receipt of the Support Services.

3.2. Customer Information. Immediately on receipt, Customer will register all Hardware and Software on the NetApp Support Site to create Customer’s support profile. Customer will keep this profile up-to-date. TROs, if any, can be met only if Customer has provided NetApp with accurate information including delivery and on-site service addresses, names and phone numbers of key Customer contacts and access to Customer’s location. If this information is inaccurate or obsolete and/or access to Customer’s location is unavailable or denied to the NetApp ASE or other representatives, adherence to any applicable TRO will be measured from the time that correct information is provided by the Customer to NetApp and/or the NetApp ASE is granted access to Customer’s location.

3.3. NetApp Support Site. During the Support Services Period, Customer will be granted access to the NetApp Support Site. A unique login and password will be assigned to Customer by NetApp, which will be deemed NetApp Confidential Information.

3.4. Miscellaneous Permissions. In the event that NetApp requires access to any computer systems or software owned or licensed by Customer in order to provide the Support Services, Customer will obtain all associated permissions.

3.5. Work Environment. Customer will provide NetApp or the NetApp ASE with a safe working environment and make all necessary arrangements as NetApp may determine is reasonably necessary to perform the Support Services.

3.6. Equipment Relocation. In the event that Customer wishes to relocate Hardware or Software, Customer will contact the NetApp TSC at least thirty (30) days prior to such relocation. NetApp will notify Customer if Customer’s existing Support Services are available at the new location. Customer acknowledges that relocation of the Hardware or Software may result in a decrease of the scope and an increase in the pricing of Support Services. NetApp will communicate this to Customer on a case-by-case basis. If Customer fails to notify NetApp of the relocation of Hardware or Software as required above, NetApp may refuse to provide the Support Services at its sole discretion. In the event of an increase in pricing of Support Services following relocation, Customer will promptly submit a Purchase Order to NetApp and pay the associated NetApp invoice.

3.7. Reinstatement of Lapsed Support. In the event that Customer wishes to reinstate Support Services after a lapsed period following expiration or termination of the original Support Services Period, Customer will pay to NetApp an amount equal to the Support Services fees that would have been due for accrued Support Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Support Services Period being purchased. All such amount will be calculated in accordance with the Price List.

3.8 Data Protection. Performance of Support Services under these Terms may result in Customer providing NetApp access to Personal Data. NetApp does not need nor request access to Personal Data in order to provide Support Services. In the event Customer does provide Personal Data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

GENERAL TERMS

Terms for All Transactions

These General Terms ("Terms") apply to the sale of Products and Services by NetApp, Inc., NetApp B.V. or any of their affiliates ("NetApp") directly to the Ordering Activity customer acquiring Products and Services for its own use ("Customer"), unless Customer has entered into a separate agreement with NetApp governing such sale. By both parties executing this agreement in writing, Customer agrees to these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

1. DEFINITIONS

1.1. Cloud-Based Offering. Hardware, Software, and any Services offered, distributed, marketed or otherwise sold by NetApp for use through a Cloud Provider.

1.2. Cloud Provider. A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

1.3. Documentation. NetApp supplied then current technical documentation describing the features and functions of the associated Products.

1.4. Hardware. NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.

1.5. Order Documentation. The applicable NetApp price quotation (and the NetApp engagement document, if required for the purchase of applicable Services), the corresponding Purchase Order, and the associated Documentation for the Products or Services purchased or licensed hereunder.

1.6. Price List. NetApp’s then-current list of Products and Services, and their associated prices for the country of destination.


1.8. Purchase Order. A written or electronic order provided to NetApp consistent with the corresponding price quotation for the purchase of Products and Services.

1.9. Services. NetApp’s consulting services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").

1.10. Software. NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, management software.

1.11. Third Party Branded Products. Any hardware or software that is manufactured, developed, licensed or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

2. ORDERS, DELIVERY and ACCEPTANCE
2.1. Orders. All Purchase Orders are subject to acceptance by NetApp.
2.2. Changes, Cancellation, and Rescheduling. Customer may modify or cancel Purchase Orders up to ten (10) days prior to any scheduled shipment date, and Customer may reschedule a requested delivery date one time per Purchase Order without additional charge. Product returns are subject to NetApp approval.
2.3. Delivery. Delivery of hardware and software pre-installed on the hardware occurs according to the applicable trade term specified on the NetApp price quotation or as agreed to by NetApp on a case by case basis. Delivery of software that is not pre-installed on hardware occurs when NetApp makes the enabling key available to Customer or, if an enabling key is not required, when NetApp makes such software available for download or use by Customer.
2.4. Risk of Loss. Risk of loss or damage to the Products and title to any hardware in the Products will pass to Customer upon delivery.
2.5. Acceptance. Acceptance by Customer of Products will occur upon delivery, and acceptance by Customer of Services will occur when such Services are rendered, unless otherwise agreed in a NetApp engagement document.

3. PRICING AND PAYMENTS
3.1. Reserved.
3.2. Payment Terms. Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than thirty (30) days from the date of receipt of NetApp's invoice.
3.3. Remedies for Non-payment. Customer payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent.
3.4. Taxes and Duties. NetApp shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

4. SOFTWARE LICENSE
4.1. License Grant. Subject to these Terms and any limitations or restrictions set forth in the corresponding Order Documentation, NetApp grants to Customer a personal, non-exclusive, nontransferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer's internal business purposes only, and (b) use the Documentation in support of Customer's use of the Software. The Software associated with Customer's license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based licenses"), or is independent of a storage controller ("Standalone licenses"), and the license is one of the following license types: (a) "Life-of-controller": Controller-based licenses granted for the period of time during which Customer's controller is operable; (b) "Perpetual": Standalone licenses granted in perpetuity; (c) "Term": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (d) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupportTM Remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp's prior written agreement, and in the context of non-disruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.
4.2. License Restrictions. Customer will not, nor will Customer allow any third party to, (a) reverse engineer, decompile or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt, or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.
4.3. Reserved.
4.4 Software Copyright Information and Notices. Software copyright information and other related details are included as part of notices in the Documentation or other documentation published by NetApp (e.g. NOTICES.TXT or NOTICES.PDF).

5. SERVICES
5.1. Services. Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp's How to Buy information provided above.

6. DIRECT WARRANTY
6.1. Hardware Warranty. NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, unless otherwise specified in the applicable Documentation ("Hardware Warranty Period"). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole expense, repair or replace the Hardware, or refund the amounts received by NetApp for the nonconforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law.
6.2. Software Warranty. NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). NetApp does not warrant that Customer's
use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is productive and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or return the amount paid by Customer for the Software where the claimed nonconformity is caused by a defect in materials, workmanship, or the Software. This warranty does not cover software, or other items, or any services provided by persons other than NetApp.

6.3. Limitations. NetApp will not be liable under this warranty for claims arising from Customer’s, Customer’s subcontractor’s, or any unauthorized third party’s, misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Software warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp’s prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 4, except as authorized in writing by NetApp. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

6.4. Exclusive Warranties. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER’S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

7. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

7.1. General. The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

7.2. IP Claims. Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright (“IP Claim”). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, “Damages”) against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with sole control of the defense or settlement negotiations. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §16.

7.3. Remedies. NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, or NetApp will refund Customer’s purchase price. 7.4. Exclusions. Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp’s compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp’s authorization; (c) Customer’s failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information used, accessed or disclosed in the same manner as it protects its own proprietary information of a similar nature, and in any event with a degree of care no less than the reasonable degree of care. The receiving Party of Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

8. CONFIDENTIALITY

8.1. General. “Confidential Information” means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked “confidential” or “proprietary at the time of disclosure; (b) if disclosed orally or visually, is designated “confidential” or “proprietary” at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. “Confidential Information” shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party’s lawful possession prior to the disclosure and had not been obtained by the receiving Party directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party. Neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings.

NetApp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

8.2. Treatment of Confidential Information. Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other’s Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party’s Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party’s Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party’s Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

8.3. Return/Destruction. Upon the disclosing Party’s written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 6.3.
. 9. LIMITATION OF LIABILITY

9.1. Liability Exclusions. Regardless of the basis of claim (e.g., contract, tort, or statute), in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or services; interruption of business;

Customer’s failure to comply with applicable “non-erasable” and “non-rewriteable” U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer’s failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

9.2. Cumulative Liability. To the extent that limitation of liability is permitted by law, NetApp’s liability to Customer is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

9.3. Exceptions. The limitations set forth in Sections 9.1 and 9.2 will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 7.

. 10. COMPLIANCE WITH LAWS

10.1. Compliance. Each Party will comply with all applicable laws and regulations.

10.2. Export. Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp end use and end user information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers transfers Products and Services to comply with all obligations set forth herein.

10.3. Anti-Bribery. Each Party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

. 11. MISCELLANEOUS

11.1. Termination. These Terms are effective until terminated. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer’s possession or under Customer’s control, unless the license granted to Customer under Section 4.1 is a perpetual license and Customer remains in full compliance with these Terms. Sections 4.2 - 4.4, 6, 7, 8, 9, 10, and 11 will survive expiration or termination of these Terms.

11.2. U.S. Federal Government Customers. This Section 11.2 applies only to U.S. Federal Government Customers. The Software and Documentation is “commercial” computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 11.16. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is intended to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect as written.

11.3. Cloud-Based Offering Notice. Customers buying Cloud-Based Offerings must also comply with the Cloud Provider’s applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider’s services, compliance, and security. Customers using CloudBased Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp’s liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

11.4. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

11.5. Data Privacy and Recovery. Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control and management of Hardware and Software including following industry-standard processes, procedures and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer’s internal processes and procedures related to the protection, loss, confidentiality, or security of Customer’s data or information.

11.6. Hazardous Environments. Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

11.7. Product Evaluation. Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products.
for Customer’s needs. Notwithstanding Section 6 above, these Products are provided and licensed to Customer on an “AS IS” basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

11.8. Reserved.

11.9. Reserved.

11.10. Waiver. Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party’s exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

11.11. Severability. In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect. Both Parties irrevocably agree that each provision in these Terms is severable and that the unenforceability of any provision is not the basis for invalidating or voiding any other provisions of these Terms.

11.12. Assignment. Customer and NetApp may not assign any rights or delegate any obligations under these Terms without the prior written consent of the other party. Any purported assignment by Customer or NetApp without the prior written consent of the other party will be null and void.

11.13. Subcontractors. NetApp may use subcontractors to fulfill its obligations under these Terms.

11.14. Independent Contractors. The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

11.15. Publicity. No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

11.16. Audit. Subject to applicable Government security requirements, Customer grants NetApp and its independent accountants the right to audit Customer or Customer’s subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, NetApp will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

11.17. General. These Terms will be construed pursuant to the Federal laws of the United States. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer’s use of the Products. If required by NetApp’s agreement with a third party licensor, NetApp’s licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of the Terms will govern, to the extent permitted by applicable laws. These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms, acknowledgement, or similar communications between the Parties. Order Documentation(s) issued by Customer will be deemed to incorporate and be subject to these Terms, except where the Parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any Purchase Order, Order Documentation form, contractual document or other similar correspondence originating by either Party will have no effect unless the Parties expressly agree in writing. A negotiated purchase order signed by both parties would take precedence as the negotiated purchase order would demonstrate any changes to the meeting the ordering activity’s minimum needs.

11.18. Use Restriction. Products and Services are for Customer’s use and are not for resale or redistribution.

CHANNEL END USER TERMS

These Channel End User Terms (“Terms”) set forth the direct terms and conditions between NetApp, Inc., NetApp B.V., or any of their affiliates (“NetApp”) and “Ordering Activity” under GSA Schedule contracts (“Customer”) in connection with NetApp Products and Services purchased by Customer from an authorized NetApp reseller, unless Customer has entered into a separate agreement with NetApp in connection with such Products or Services. By both parties executing these Terms in writing, Customer agrees to be bound by these Terms. NetApp and Customer may each be referred to as a “Party” or collectively, as the “Parties.”

1. DEFINITIONS

1.1. Cloud-Based Offering. Hardware, Software, and any Services offered, distributed, marketed, or otherwise sold by NetApp or a NetApp authorized distributor, reseller, or partner for use through a Cloud Provider.

1.2. Cloud Provider. A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

1.3. Documentation. NetApp supplied then current technical documentation describing the features and functions of the associated Products.

1.4. Hardware. NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.


1.6. Services. NetApp’s consulting services (“Professional Services”) and/or its generally available technical support and maintenance services programs (“Support Services”).

1.7. Software. NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.

1.8. Third Party Branded Products. Any hardware or software that is manufactured, developed, licensed, or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

2. SOFTWARE LICENSE

2.1. License Grant. Subject to these Terms and any limitations or restrictions set forth in the corresponding Documentation, NetApp grants to Customer a personal, non-exclusive, non-transferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer’s internal business purposes only, and (b) use the Documentation in support of Customer’s use of the Software. The Software associated with Customer's license is either bundled with a specific storage...
controller identified by a unique serial number (“Controller-based licenses”), or is independent of a storage controller (“Standalone licenses”), and the license is one of the following license types: (a) “Life-of-controller”: Controller-based licenses granted for the period of time during which Customer’s controller is operable; (b) “Perpetual”: Standalone licenses granted in perpetuity; (c) “Term”: Controller-based licenses or Standalone licenses granted for a specified period of time; and (e) “Subscription”: Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp’s AutoSupportTM remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp’s prior written agreement, and in the context of nondisruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

2.2. License Restrictions. Customer will not, nor will Customer allow any third party to (a) reverse engineer, decompile, or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

2.3. Reserved.

2.4. Software Copyright Information and Notices. Software copyright information and other related details are included as part of notices in the documentation published by NetApp (e.g. NOTICES, TXT or NOTICES, PDF).

3. SERVICES

3.1. Services. Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp’s How to Buy information provided above.

4. DIRECT WARRANTY

4.1. Hardware Warranty. NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, unless otherwise specified in the applicable Documentation (“Hardware Warranty Period”). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Hardware, or refund amounts received by NetApp for the nonconforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law. For purposes of this Section 4.1 delivery is made pursuant to the applicable trade terms specified on the quotation or as agreed to by NetApp.

4.2. Software Warranty. NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law (“Software Warranty Period”). NetApp does not warrant that Customer’s use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the nonconforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp or a NetApp authorized distributor, reseller or partner. For the purposes of this Section 4.2, if Software is pre-installed on the Hardware, delivery is made pursuant to the applicable trade terms specified on the quotation or as agreed to by NetApp. If the Software is not pre-installed on the Hardware, then for the purposes of this Section 4.2, delivery is made when NetApp makes the enabling key available to a Customer or, if an enabling key is not required, otherwise makes such Software available for download or use by the Customer.

4.3. Limitations. NetApp will not be liable under this warranty for claims arising from Customer’s, Customer’s subcontractor’s, or any unauthorized third person’s misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp’s prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 2, except as authorized in writing by NetApp.

4.4. Exclusive Warranties. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER’S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

5. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

5.1 General. The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title, or interest in any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

5.2. IP Claims. Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that the Software, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright (“IP Claim”). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, “Damages”) against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with control of the defense or settlement negotiations.

5.3. Remedies. NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes noninfringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the Product and NetApp will refund Customer’s purchase price.
5.4. Exclusions. Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp’s compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp’s prior written authorization; (c) Customer’s failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

5.5. Entire Liability. Notwithstanding any Term to the contrary in these Terms, this Section 5 states NetApp’s entire liability and Customer’s sole and exclusive remedies for IP Claims.

6. CONFIDENTIALITY

6.1. General. “Confidential Information” means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked “confidential” or “proprietary at the time of disclosure; (b) if disclosed orally or visually, is designated “confidential” or “proprietary” at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. “Confidential Information” shall include any reproduction of such information, but shall not include information that: (a) is or becomes part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party’s lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is rightfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party.

6.2. Treatment of Confidential Information. Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other’s Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party’s Confidential Information in confidence for a period of three (3) years from the date of disclosure, (b) to disclose the other Party’s Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party’s Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

6.3. Return/DeSTRUCTION. Upon the disclosing Party’s written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 6.3.

7. LIMITATION OF LIABILITY

7.1. Liability Exclusions. Regardless of the basis of claims (e.g., contract, tort, or statute) in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer’s failure to comply with applicable “non-erasable” and “non-rewriteable” U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer’s failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

7.2. Cumulative Liability. To the extent that limitation of liability is permitted by law, NetApp’s liability is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

7.3. Exceptions. The limitations set forth in Sections 7.1 and 7.2 above will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, or any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 5.

8. COMPLIANCE WITH LAWS

8.1. Compliance. Each Party will comply with all applicable laws and regulations.

8.2. Export. Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp with end use and end user information upon NetApp’s request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to which it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

8.3. Anti-Bribery. Each Party shall comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

9. MISCELLANEOUS

9.1. Termination. These Terms are effective until terminated. Customer may terminate these Terms at any time upon written notice to NetApp. NetApp may terminate these Terms immediately upon written notice to Customer if Customer commits a material breach of these Terms, including failure to remit payments when due (whether payable to NetApp or its authorized third party financing partners in connection with an Approved Financing Agreement, described in Section 9.7 below) and, in the event that the breach is remediable, Customer fails to remedy it within thirty (30) days of NetApp’s written notice requiring Customer to do so. Upon termination of these
Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp’s request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer’s possession or under Customer’s control, unless the license granted to Customer under Section 2.1 is a perpetual license and Customer remains in full compliance with these Terms.

9.2. U.S. Federal Government Customers. This Section 9.2 applies only to U.S. Federal Government Customers. The Software and Documentation is “commercial” computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 9.15. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other terms remain in effect as written.

9.3. Cloud-Based Offering Notice. Customers buying Cloud-Based Offerings must also comply with the Cloud Provider’s applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider’s services, compliance, and security. Customers using Cloud-Based Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp’s liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

9.4. Force Majeure. Neither Party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation or any other causes beyond the reasonable control of a Party (collectively, "Force Majeure").

9.5. Data Privacy and Recovery. Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control, and management of NetApp Hardware and Software including following industry-standard processes, procedures, and requirements: (a) for the security of input, output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer’s internal processes and procedures related to the protection, loss, confidentiality, or security of Customer’s data or information.

9.6. Hazardous Environments. Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

9.7. Product Evaluation. Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer’s needs. Notwithstanding Section 4 above, the evaluation Products are provided and licensed to Customer on an “AS IS” basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

9.8. NetApp Approved Financing. These Terms also apply to “Financed Software,” which means Software and Documentation licensed to Customer for a limited period of use pursuant to the terms of a financing agreement between Customer and NetApp or its authorized third party financing partner (an “Approved Financing Agreement” or “AFA”), subject to the following: (a) the particular Financed Software, period of use, installation site, and other transaction-specific conditions will be as agreed in the applicable AFA; and (b) notwithstanding anything to the contrary in these Terms, all licenses for Financed Software terminate at the expiration of the term of the AFA unless otherwise expressly agreed in the AFA, or when sooner terminated by NetApp (whether in accordance with these Terms or the AFA). Customer agrees that the license granted under Section 2 above and NetApp’s termination rights under Section 9.1 above may be affected by an authorized third party financing partner’s rights under the applicable AFA, even if such partner has paid to NetApp all or any portion of the license fees for the Financed Software.

9.9. Modification, Substitution, Discontinued Product. NetApp will have sole discretion, at any time, to change, substitute, or discontinue Products. NetApp will use commercially reasonable efforts to provide sixty (60) calendar days’ prior notice of any such changes.

9.10. Waiver. Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party’s exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

9.11. In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

9.12. Assignment. Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by Customer without NetApp’s prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these Terms.

9.13. Independent Contractors. The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

9.14. Publicity. No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

9.15. Audit. Subject to Government security requirements, Customer grants NetApp and its independent accountants the right to audit Customer or Customer’s subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, NetApp will invoice Customer any fees.

9.16. General. These Terms will be construed pursuant to the Federal laws of the United States, excluding its conflicts of law provisions. The Parties agree to the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer’s use of the Products. If required by NetApp’s agreement with a third party licensor, NetApp’s licensor will be a direct and intended beneficiary of these Terms.
and may enforce them directly against Customer. These Terms may not be changed except by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of these Terms will govern, to the extent permitted by applicable laws. These Terms represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the Parties.

9.17. Use Restriction. Products and Services are for Customer’s use and are not for resale or redistribution.
1. **Scope.** This Rider and the attached NetScout Systems, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800:2G (Feb 2011), as may be revised from time to time.
   
   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
   
   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
   
   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
   
   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
   
   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
   
   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
   
   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
   
   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
   
   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
   
   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renews.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NETSCOUT SYSTEMS, INC.**

**NETSCOUT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

Definitions

“APIs” mean the software application interfaces and workflow methods made generally available by Contractor through NetScout in certain Products to enable integration, implementation, and interoperability with third party hardware and software.
"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

"Enterprise" means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

"Enterprise License" means the Software identified in the Quotation as an Enterprise License.

"Evaluation Product" shall have the meaning set forth below in Section 8.

"Hardware" means hardware products generally available on the schedule price list.

"Maintenance" means technical support services for the Products that Contractor through NetScout makes available upon purchase in accordance with the support services terms described herein.

"Managed Services" means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

"Outsourcer" means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

"Outsourcing Services" means network management and monitoring services performed by Outsourcer strictly for you and as described in Section 6.

"Pre-Released Products" shall have the meaning set forth below in Section 8.

"Product" means Software and Hardware provided by Contractor through NetScout.

"Quotation" means the document under which Contractor offers for sale and license its Products, Maintenance, and associated services.

"Service Provider" means Ordering Activity when acting in the capacity of providing Managed Services to Service Provider Customers.

"Service Provider Customer" means a third party, who has an agreement with You for Managed Services, provided that such Managed Services would not be a violation of United States ("U.S.") export restrictions.

"Software" means NetScout proprietary programs in object code and the firmware contained on the Hardware. The term Software does not include APIs.

"Software Development Kit" or "SDK" means the NetScout API, together with applicable documentation, any sample code, and any sample applications provided with the API.

"Unsupported Products" shall have the meaning set forth below in Section 8.

"Updates" means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid Maintenance contract.

"You" or “Your” means Ordering Activity.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Attachment A, Contractor grants You a limited, non-exclusive, non-transferable license to use the Software and the Documentation for Your own internal business purposes. Such usage is limited to the number of licenses for which You paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only ("Copy"). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively "Redundant Environments").

If You are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow You to install, copy, and use an Enterprise License throughout your Enterprise for Your internal use only, subject to the terms and limitations set forth in this Attachment A and the Documentation.

2. License Restrictions.

(a) Without limiting this Attachment A, Contractor retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Contractor retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Attachment A, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to You.

Without limiting the generality of the foregoing, You, Your employees, and Your consultants will not and will not authorize or permit any third party to:

i. copy or reproduce any part of the Software or Documentation, except as permitted above;
ii. transfer the Software without Contractor’s prior written authorization. Transfers will only be permitted for products with no more than minimal differences in price, features and functionality and provided that the transfer does not increase the number of licensed copies;
iii. sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of Contractor; or
iv. modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.
If You want to relocate any Product EXCEPT AS OTHERWISE PROVIDED IN 5. Warranty Limit. The foregoing warranties will apply provided You give Contractor prompt written notice of the material defect or nonconformity as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable effort to correct the defect or return the defective media or non-conforming Software or Hardware to You and replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to substantially conform as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware. The foregoing warranties will apply provided You give Contractor prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to Contractor in accordance with Contractor’s return process.

5. Warranty Limit. The warranty set forth in Section 4 does not apply to any failure of the Software or Hardware caused by (a) Your failure to follow NetScout's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by Contractor or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Contractor’s reasonable control. Contractor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Contractor warrant that the Products are appropriate for Your purposes or error-free. EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, THE WARRANTY SET FORTH IN SECTION 4 IS YOUR REMEDY AND CONTRACTOR'S LIABILITY FOR DEFECTIVE MEDIA OR NONCONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6. Outsourcing. Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process Your data solely for Your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than You, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Attachment A, and (c) You provide written notification to Contractor of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, You will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If You want to relocate any Products from Your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by You and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for You and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in Section 1, or (b) copied to implement a Redundant Environment without collective payment of the applicable GSA fee.

7. U.S. Government Restricted Rights. All NetScout Software, including the Documentation and technical data, sold or delivered pursuant to this Attachment A for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Attachment A and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Attachment A, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

8. Additional Terms and Limitations for Unsupported Products. (a) Evaluation Products. Prior to You making a decision to purchase Products, Contractor through NetScout may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Attachment A, if NetScout provides You with an Evaluation Product, You shall use such products only for evaluation purposes, as allowed herein.

(c) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider. Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support, Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require Contractor's prior written consent, and Service Provider will notify Contractor of the name and new address the Service Provider Customer associated with such transfer.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to Contractor that all of the foregoing have been destroyed.

4. Limited Warranty. Contractor warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the original date of shipment of the Software ("Media Warranty Period"). Contractor warrants that the Software for a period of 90 days ("Software Warranty Period") and the Hardware for a period of 12 months ("Hardware Warranty Period"), in either case from its original date of shipment or when first made available to You for download, will substantially conform to the Documentation. If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Contractor, the media may be returned to Contractor, and Contractor will replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.
Product, then NetScout grants You a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable NetScout Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) Pre-Released Product. Subject to the terms of this Attachment A, if the product You have received with this license is not yet commercially available ("Pre-Released Product"), then Contractor grants you a temporary, revocable, nonexclusive, non-transferable license to use the Pre-Released Product as provided to You by Contractor and the associated Documentation, if any, solely for testing purposes at the direction of Contractor. Additionally, You acknowledge that (i) Contractor has no expressed or implied obligation to You to announce or introduce the Pre-Released Product; and (ii) You understand that Contractor may not introduce a product similar to or compatible with the Pre-Released Product. Accordingly, You acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at Your own risk. During the term of this Attachment A, if requested by Contractor, You will provide feedback to Contractor regarding use of the Pre-Released Product, including error or bug reports. If You have been provided the Pre-Released Product pursuant to a separate written agreement, Your use of the Pre-Released Product is also governed by such agreement. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Contractor of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, You agree to return or destroy all copies of earlier Pre-Released Product received from Contractor and to abide by the terms of this Attachment A for any such later versions of the Pre-Released Product.

(c) APIs. Contractor through NetScout may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of Your software code. You may not use the SDK to develop a product or service that competes with products or services offered by NetScout, or incorporate the Runtime Component in a product that competes with the products offered by NetScout.

(d) Unsupported Products. If the product You have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii)SDKs (collectively "Unsupported Products"), then You acknowledge and agree that You will take all precautions and safeguards necessary to protect Your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Attachment A, this section shall supersede such term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to You "AS-IS" and Contractor disclaims any warranty obligations to You of any kind. Maintenance is not available for the Unsupported Products. Contractor through NetScout may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict Your access to parts or all of Pre-Released and SDK Products. Your use of the Evaluation or Pre-Released Product is limited to 30 days unless otherwise agreed to in writing by Contractor. The restrictions in Section 2 herein, apply to Your use of Unsupported Products.

(e) Contractor's ownership rights in Section 2 apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in Your original code created through your use of the SDK in no way alters Contractor's ownership rights in the Runtime Component. Contractor may develop software programs substantially similar or identical to those developed by You through Your use of the SDK and reserves the right to sell and distribute those software programs.

9. Product Returns. Prior to returning Evaluation Products or Pre-released Products to Contractor through NetScout, You must remove any (i) confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information (as such is defined under applicable local law, regulation or directive, including without limitation, in the U.S., the Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, You are responsible for backing up Your data on the Evaluation Products or Pre-Released Products. NetScout is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

EXHIBIT A – MAINTENANCE AND SUPPORT SERVICES

1. Maintenance Descriptions. Contractor through NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. “Normal Business Hours” are Monday through Friday, 8:00 a.m. – 5:00 p.m. local time for all other regions. Unless otherwise agreed to by in writing by NetScout, Product is eligible for Maintenance support services provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the Hardware Coverage Period.

A. MasterCare Support. Subject to the terms herein, the MasterCare Support services includes: 24x7 access to technical support engineers; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as “Updates”) for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the Covered Period; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout’s online learning center; electronic MasterCare newsletter; discount on unlimited registrations to NetScout’s user forum conference; and registered access to the MasterCare portal. Live technical telephone support is provided 24x7 for severity 1 issues received by phone and non-severity 1 issues received by phone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf.

B. Gold Support. Subject to the terms herein and for existing Ordering Activities who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; and registered access to the MasterCare portal. 72-hour return repair on Hardware means the time from which the Hardware is received at Contractor through NetScout to the time the repairs are completed. It does not include the shipping time back to the Ordering Activity. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.
C. Supplemental Maintenance Offerings. Ordering Activities purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings. If an engineer or technical account manager is not available due to a holiday, paid time off, or training, a Contractor through NetScout remote back-up support engineer or technical account manager will provide remote back-up coverage during that time and to the extent practicable.

- **OnSite Engineer Services.** Onsite Engineer Services ("OSE Services") are provided by a Contractor through NetScout technical support engineer located at customer's designated site and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer's network performance management environment, including: (i) installation of operating system and Software upgrades; (ii) hardware maintenance, Software patches, and service pack installation; and (iii) oversight of monitored element changes; backup maintenance such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new NetScout Products; beta testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 40 hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday. NetScout will provide one of the following for each week: (i) OSE Services, (ii) RSE Services, and (iii) TAM Services.

- **Remote Site Engineer Services.** Remote Site Engineer Services ("RSE Services") is an annual service available to Ordering Activities, provided by a Contractor through NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and off-site storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new NetScout Products; facilitation of beta testing of new Products and features when requested; and annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed 20 hours per week, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts, and excluding NetScout holidays and paid time off.

- **Technical Account Manager Services.** Technical Account Manager Services ("TAM Services") are provided by a Contractor through NetScout shared remote technical account manager located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five Ordering Activity contacts; escalation of technical service requests as required; ownership of all client Ordering Activity care issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication and knowledge transfer on product introductions, updates, new features, filters, and patches; provide a conduit for networking and sharing best practices; managing weekly status calls to discuss open issues, upcoming rollouts, or other projects affecting Ordering Activity’s NetScout environment; providing monthly NetScout server “health checks” to ensure products are stable and running efficiently; unlimited free registration for NetScout User Forum events.

2. **Term and Renewal.** Unless otherwise agreed to by the parties in writing, the initial term for (i) MasterCare Support will be 12 months commencing on the date specified in Contractor's quote, (ii) OSE Services will be 12 months commencing on the date the engineer arrives at Ordering Activity's designated site, and (iii) RSE and TAM Services will be 12 months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product.

3. **Continuing Availability.** If Contractor through NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

4. **Substitutions; Software Updates.** Contractor through NetScout reserves the right to substitute functionally compatible products not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

5. **Warranty.** Contractor warrants that Maintenance support services will be performed in a good and workmanlike manner. Ordering Activity’s remedy for breach of this warranty will be for Contractor to re-perform the Maintenance support services at no expense to Ordering Activity. NetScout Products are warranted in accordance with these Attachment A terms. EXCEPT FOR THE FOREGOING WARRANTY, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

6. **Limitations and Exclusions.** Contractor through NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If Ordering Activity has a party other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to Products resulting from the fault or negligence of Ordering Activity or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare or Gold Support and are separately chargeable at the then-current GSA price.

7. **Repairs.** A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If Contractor through NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide MasterCare or Gold Support with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, Ordering Activity must remove any confidential, proprietary, or personal information, including without limitation, personal
health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, Ordering Activity is responsible for backing up Ordering Activity’s data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of Ordering Activity’s confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

8. Ordering Activity Obligations

A. Access to Products. Ordering Activity will grant the Contractor through NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare or Gold Support. Additionally during any OSE Services term, Ordering Activity will (i) make available to the engineer a dedicated office space, telephone, and telephone line in a location that is within a reasonable proximity of the Products (“Office Area”), and (ii) designate an employee of Ordering Activity to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

B. MasterCare Support Coverage for Products. OSE, RSE and TAM Services are an extension of MasterCare Support, therefore, Ordering Activity must purchase and continuously maintain throughout the OSE, RSE or TAM Services term MasterCare Support coverage on all NetScout Products it has provisioned from Contractor through NetScout. Contractor will not be obligated to provide OSE, RSE or TAM Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of Ordering Activity.

ATTACHMENT A – ARBOR NETWORKS, INC.

LICENSING AGREEMENT

THIS LICENSING AGREEMENT (“Agreement”) is entered into by and between Arbor Networks, Inc., a Delaware corporation with its principal office at 76 Blanchard Road, Burlington, MA 01803 (“Arbor”) and the Ordering Activity under GSA Schedule contract(s) (“You/Your” or “Ordering Activity”). Arbor and You are also referred to individually as a “Party” and collectively as “Parties.” PURPOSE AND SCOPE. This Agreement sets forth the terms and conditions under which Arbor agrees to grant a license to use Arbor’s Product (“Software”) and to provide related Services to You. It is intended by the Parties that this Agreement govern any purchase made during the term of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

1. License to Use. Arbor grants You a limited, revocable, non-exclusive, non-transferable license (the “License”) to use Arbor’s software in machine-readable form that is shipped to You and/or identified on the attached form ("Form") and accompanying documentation (collectively “Product”) on the machines on which the software has been installed or authorized by Arbor. The term of the license shall be as stated on the Form. Your affiliate(s), purchasing agents, and outsourcing vendors (“Affiliates”) may on your behalf purchase or use Product so long as each is bound to terms as in this Agreement and You indemnify Arbor for their breach of this Agreement.

Any future trial or purchase of Product and services is governed exclusively by this Agreement and may be effected by You or Your Affiliates providing a purchase order or trial request. Trial term licenses for Product shall be for the longer of thirty (30) days from date of Product’s delivery to You or as stated on the Form supplied by Arbor. Any feed, release, revision or enhancement to the Software that Arbor may furnish to You becomes a part of Product and is governed by this Agreement. Specifically for Product, if You have not purchased a license by the end of a Product trial term or You breach this Agreement, You agree to return Product and any machine provided by Arbor to Arbor in its original condition less normal wear and tear in original packaging or equivalent and in accordance with Arbor’s RMA process within 10 days. You agree to pay for any damage to Product occurring prior to receipt by Arbor. If You purchase a license to Product, this Agreement will control that purchase and title to machines (where applicable) provided hereunder vests in You.

2. Proprietary Rights and Restrictions. Arbor and/or its licensors and outsourcing vendors (together, “Vendors”) retain all right, title, and interest in the Software and in all copies thereof, and no title to the Software or any individual copies or other rights therein, are transferred to You other than as specified herein. No right, title or interest to any trademarks, service marks or trade names of Arbor or its Vendors is granted by this Agreement. Software is copyrighted and contains proprietary information and trade secrets belonging to Arbor and/or its Vendors. You will only use Software for Your own internal business purposes. You may not make copies of the Software, other than a single copy in machine-readable format for back-up or archival purposes. You may make copies of the associated documentation for Your internal use only. You shall ensure that all proprietary rights notices on Software are reproduced and applied to any copies. Licenses are limited to use in accordance with the “Description” on the Form and user documentation. You agree not to cause or permit the reverse engineering or decompilation of the Software or to derive source code therefrom. You may not create derivative works based upon all or part of Software. You may not transfer, lend, lease, assign, sublicense, and/or make available through timesharing. Software, in whole or in part. If you are purchasing spare Product, you are only licensed to use such spare during such time as another Product is removed from service for repair.

3. Confidentiality. When disclosing information under this Agreement, the disclosing party will be the “Disclosing Party” and the receiving party will be the “Receiving Party.” The term “Confidential Information” includes: (a) a party’s technical, financial, commercial or other proprietary information including without limitation product roadmaps, pricing, software code and documentation, Software, techniques or systems and (b) information or data that is confidential and proprietary to a third party and is in the possession or control of a party. The Receiving Party will not disclose any of the Disclosing Party’s Confidential Information to any third party except to the extent such disclosure is necessary for performance of the Agreement or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction or license, or is required to be disclosed by any authority having jurisdiction so long as Disclosing Party is provided advance notice of such disclosure by the Receiving Party. Each party’s respective Confidential Information shall remain its own property. Notwithstanding the foregoing, Arbor may use anonymized data from the Product for its business purposes provided that Arbor shall not identify You to any third party as the source of such data.

4. Product Warranty, Indemnification. Arbor warrants, for sixty (60) days from shipment, that Product will perform in compliance with user manuals accompanying Product. If, within sixty (60) days of shipment, You report to Arbor that Product is not performing as described above, and Arbor is unable to correct it within sixty (60) days of the date You report it, You may return the non-performing Product at Arbor’s expense, and Arbor will refund amounts paid for such Product. The foregoing is Your sole and exclusive remedy. Arbor agrees to defend You from and against any third party claim or action based on any alleged infringement of any U.S. patent or copyright arising from use of the Product according to the terms and conditions of this Agreement (“Claim”), and Arbor agrees to indemnify You from damages awarded against You in any such Claim or settlement thereof, provided that (i) Arbor is promptly notified in writing of such claim, (ii) You grant Arbor sole control of the defense and any related settlement negotiations, and (iii) You cooperate with Arbor in defense of such Claim. Notwithstanding the foregoing, Arbor shall have no liability to You if the infringement results from (a) use of the Product in combination with software not provided by Arbor; (b) modifications to the Product not made by Arbor; (c) use of the Product other than in accordance
with the Documentation or this Agreement; or (d) failure to use an updated, non-infringing version of the applicable Product. The foregoing states the entire liability of Arbor with respect to infringement.

5. Limitations. EXCEPT AS OTHERWISE PROVIDED HEREIN, ARBOR AND ITS THIRD-PARTY VENDORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ARBOR’S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF PRODUCT PROVIDED HEREUNDER, AND/OR ARBOR’S PERFORMANCE OF SERVICES, SHALL NOT EXCEED THE AMOUNT PAID UNDER THIS AGREEMENT FOR PRODUCT WITHIN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM, WHETHER A CLAIM IS BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE. IN NO EVENT SHALL ARBOR OR ITS VENDORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR OTHER ECONOMIC LOSS WHETHER SUSTAINED BY YOU OR ANY THIRD PARTY. ARBOR SHALL NOT BE LIABLE FOR ANY ECONOMIC LOSS SUFFERED OR CONSEQUENCES OF ANY NATURE WHATSOEVER EVEN IF ARBOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ARBOR BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA.

YOUR SOLE RECOURSE HEREUNDER SHALL BE AGAINST ARBOR AND YOU SHALL HOLD THIRD PARTY VENDORS HARMLESS.

6. Product Installation and Support. Installation purchased directly from Arbor with Product is governed by this Agreement, but Arbor shall not be required to continue any installation for longer than 90 days following receipt of Product. If a perpetual license is granted hereunder, You agree to purchase support (“Support”) for at least the initial year from shipment. Thereafter, Arbor will invoice approximately sixty (60) days prior to the end of the Support term for additional one-year periods so long as Product is covered by Support. Failure to pay such invoice will result in a lapse of Your Support. If Support lapses, upon renewal of Support a 10% reinstatement fee will be assessed and you shall pay all Support fees back to the date Support lapsed. Each annual renewal service price shall be no less than the previous service price. With Support, Arbor will provide You (i) telephone and email based technical support in accordance with the level purchased and (ii) all new maintenance releases to Product when and if available during Your participation in Support. Arbor shall not be required to provide Support on any Product (i) for more than twelve months after its general release, or (ii) more than one release behind the currently shipping release. Arbor shall be permitted to subcontract any of its services or Support obligations under this Agreement to an affiliated company including, without limitation, Arbor Networks, Inc. in the United States.

7. Export Regulation and Government Rights. You agree to comply strictly with all U.S. export control laws, including the U.S. Export Administration Act and Export Administration Regulations (“EAR”). Product is prohibited for export or re-export to the list of terrorists supporting countries or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. If Product is being shipped by Arbor, then it is exported from the U.S. in accordance with the EAR. Division contrary to U.S. law is prohibited. If You are licensing Product or its accompanying documentation on behalf of the U.S. Government, it is classified as “Commercial Computer Product” and “Commercial Computer Documentation” developed at private expense, contains confidential information and trade secrets of Arbor and its licensors, and is subject to “Restricted Rights” as that term is defined in the Federal Acquisition Regulations (“FARs”). Contractor/Manufacturer is: Arbor Networks, Inc., and its subsidiaries, Burlington, Massachusetts, USA.

8. General. Any present, past, or future representations, proposals and understandings with respect to this Agreement are hereby merged into this Agreement and are hereby superseded by the terms and conditions set forth herein. This Agreement is the entire agreement between You and Arbor relating to Product and supersedes all prior, contemporaneous communications, proposals and understandings. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts as sole jurisdiction and venue for any litigation arising from or relating to this Agreement. Neither party shall be liable for the failure to perform its obligations under this Agreement due to events beyond such party's reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God or acts in compliance with any applicable law, regulation or order of any court or governmental body. Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party and any attempt to do so shall be void; except to a successor by merger, acquisition or restructuring that assumes the rights and duties of this Agreement. The following sections survive termination or expiration of this Agreement: Proprietary Rights and Restrictions, Confidentiality, Limitations, Export and Government Rights, and General. All Product shipments are FCA Shipping Point and title to machines shall pass upon shipment.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the parties have executed this Agreement as of this day _____________, 20__, intending legally to be bound.

Arbor Networks, Inc.

Company Name

BY: ____________________________

Print Name: ____________________________

Title: ____________________________

Date: ____________________________
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached NNDATA CORPORATION (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) ExcusableDelays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

f) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 573(c), GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
NNDATA CORPORATION

NNCOMPASS TERMS & CONDITIONS
These Terms & Conditions ("Agreement" or "Terms") govern your acquisition and use of NNData's NNCompass software. You agree to the terms and conditions outlined herein. This Agreement replaces any prior agreement(s) and is effective between the Ordering Activity under GSA Schedule contracts ("Ordering Activity", "You" or "Your") and the GSA Multiple Award Schedule Contractor acting by and through its supplier, NNData, as of the date of execution of a proper Order of NNCompass.

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You agree not to perform any of the following prohibited activities, including but not limited to:

- license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose, access, or otherwise commercially exploit the Software or make the Software available to any third party; copy or use the Software for any purpose other than as permitted under the above section 'License';
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Your right to use the Software is not transferable. Any password or right given to you to obtain information or documents is not transferable.
. DISCLAIMER AND LIMITS
NNData warrants that the software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with the NNData written materials accompanying it. Except as expressly set forth in the foregoing, the NNCompass software is provided “as-is,” “as available,” and all warranties, express or implied, are disclaimed (including but not limited to the disclaimer of any implied warranties of merchantability and fitness for a particular purpose). The software may contain bugs, errors, problems or other limitations. No advice or information, whether oral or written, obtained by you from us through the use of the software shall create any warranty, representation or guarantee not expressly stated in this agreement.

. MISCELLANEOUS
This Agreement shall be governed by and construed in accordance with the Federal law of the United States. Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions shall remain in full force and effect. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Northrop Grumman Systems Corporation, acting through Systems Modernization and Services Division ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefor. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NORTHROP GRUMMAN SYSTEMS CORPORATION

NORTHROP GRUMMAN LICENSE, WARRANTY AND SUPPORT TERMS

This License Agreement (“Agreement”) is made and entered into and effective as of the last signature below (the “Effective Date”) by and between Northrop Grumman Systems Corporation, a corporation incorporated under the laws of the State of Delaware, United States of America, by and through its Information Systems Sector, Civil Division with offices at __________ (hereinafter referred to as “Licensor”) and the United States of America
1. Commercial Items. The software and documentation provided hereunder are “Commercial Items” as defined by Federal Acquisition Regulation (“FAR”) 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government’s use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

2. Grant of License. Licensor hereby grants to Licensee for the term identified in Schedule A, non-exclusive, non-transferable and personal, irrevocable, indivisible right and license to use the licensed subject matter (software and documentation) specified in Schedule A in accordance with the terms and conditions of this Agreement. Licensee shall use the licensed subject matter solely as installed in sites listed in Schedule A on the number of workstations for which Licensor has paid a license fee. Licensee shall not decompile, disassemble, or otherwise reverse engineer the licensed software. The right to revise, modify or enhance the licensed software is expressly prohibited. All terms and conditions of this Agreement are material terms of the license granted by this Agreement.

2. Permitted Use. The Permitted Use is set forth in Schedule A and has the meaning set forth below.

3. No Freedom to Act. Licensee agrees not to extract ideas, algorithms or procedures from the licensed subject matter (software and documentation) except as expressly stated in the foregoing. Except as provided in this section, Licensee may not use, copy, sell, lease, rent, sublicense, lend, assign or transfer in any fashion the licensed subject matter. The foregoing shall not apply to the uses, suitability, performance, capabilities, reliability or accuracy of the licensed subject matter for use in any fashion by Licensee. Licensor expressly disclaims any warranty of merchantability and warranty of fitness for a particular purpose. Notwithstanding the foregoing, Licensor agrees to repair defects in the licensed software for a period of ninety (90) days from delivery of the licensed software. Licensor does not warrant that the operation of the licensed software will be uninterrupted or error-free.

4. Copies. Licensee may make copies of the licensed software solely for archival and backup purposes. All archival and backup copies of the software are subject to the provisions of this Agreement. Licensee shall reproduce all titles, trademarks, copyright and restricted rights notices in such copies.

5. Export. Licensee agrees to comply with all applicable export laws and regulations including those rights designated proprietary in Section 3, is confidential information, the disclosure of which would harm Licensor. Licensor shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages arising out of or in connection with the license granted under this or any business activity of Licensee.
exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. Services. The license fees do not include any maintenance, online help, implementation support or other support services. The Parties will enter into a separate software maintenance agreement. The manner and periods in which, and the terms and conditions under which, such maintenance will be performed will be solely as set forth in that agreement. Under a separate agreement, Licensor will make training available to Licensee pursuant to Licensor’s standard training procedures, at Licensor’s standard rates at a location to be mutually determined by the Parties. Licensee shall limit use of the licensed software to its employees who have been appropriately trained.

10. Governing Law. Any allegation that the Licensor has breached this Agreement shall be governed by the Contract Disputes Act, 41 U.S.C. § 7101 et seq. Any dispute under this License may be resolved only in a forum expressly authorized by federal law for that dispute. The statute of limitations for, and the resolution of, such disputes will be governed by applicable federal law.

11. General. This Agreement may be modified or amended solely in writing by both Parties. The provisions of this Agreement shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. Licensee may not assign or otherwise transfer this Agreement or any of the rights granted therein without the prior written consent of Licensor. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver, and no waiver will be effective unless it is in writing and signed by the waiving party. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive termination of this Agreement. This Agreement is separate and distinct from any services associated with the software delivered hereunder.

SCHEDULE A

The Licensed Subject Matter consists of the following:

A. Licensed Software.

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B. Licensed Documentation.

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C. License Fee. The License Fee of $__________ is payable upon the Effective Date of this Agreement.

D. Delivery. Licensor shall deliver the licensed subject matter electronically within thirty (30) days of the Effective Date of this Agreement.

E. Terms and Conditions. The terms and conditions applicable to term software licenses (special item number 132-32), perpetual software license (special item number 132-33) and maintenance as a service (Special item number 132-34) of general purpose commercial information technology software per GSA Schedule GS-35F-0511T.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached NowSecure (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-3SF-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent anyAttachment A Terms inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   rr) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   ss) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   tt) **Contract Formulation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   uu) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   vv) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   ww) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   xx) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   yy) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   zz) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   aaa) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   bbb) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.


3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NOWSECURE**

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**NOWSECURE LICENSE, WARRANTY AND SUPPORT TERMS**

1. **DEFINITION OF TERMS**

   “Account” means a set of data and Users representing an individual, company or organization with a common billing address, and common Subscription or Subscriptions.
“Account Owner” means the first User, unless subsequently changed through Account management interface, which is responsible for assigning Account roles, inviting additional Users, Subscription and billing management, payment, and Account terminations.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” means the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise.

“Agreement” means this Subscription Agreement.

“Anonymized Data” means information or data that is anonymized, aggregated or de-identified and/or compiled on a generic basis and which does not name or identify a Client, specific individual or natural person, whether derived from Client Data as defined below, access or usage patterns, or another source.

“Client”, “You” or “Your” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

“Documentation” means an ordering document, schedule, or similar instrument specifying the Services to be provided hereunder, whether for payment or Evaluation, that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Evaluation” Any Subscription labeled as evaluation, trial, no cost use, or free plan.

“Harmful Content” means code, files, scripts, or programs intended to deceive, disrupt or do harm to Us or other users of the Services, including, for example, viruses, worms, time bombs and Trojans.

“Other Applications” means a Web-based or offline software application not provided by Us that interoperates with any Service or Software.

“Order Form” means an ordering document, schedule, or similar instrument specifying the Services to be provided hereunder, whether for payment or Evaluation, that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Personal Information” means Client Data that names or identifies a natural person including non-public personal data, such as passport number, social security number, driver’s license number; financial account numbers; or sensitive personal data, when personally identifiable. Personal Information shall not include Anonymized Data. "Source" means information or data that is anonymized, aggregated or de-identified and/or compiled on a generic basis and which does not name or identify a Client, specific individual or natural person, whether derived from Client Data as defined below, access or usage patterns, or another source.

“Service” means the services that are ordered by You under an Order Form and made available by Us, including associated Software components and Documentation.

“Software” means the software made accessible to You as part of the respective Services, including mobile, web or desktop software as applicable; "Subscription" means a specific period and level of Services, requiring payment of specified fees or provided at no cost, purchased or accepted by You by means of Order Form(s), whether electronic or written.

“User” or “End User” means an individual who is authorized by You to use a Service pursuant to a valid Order Form and this Agreement, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

“NowSecure”, “We”, “Us” or “Our” means NowSecure, Inc., a Delaware Corporation.

2. ACCEPTANCE MEANS AND ENTITY

2.1. RESERVED.

2.2. RESERVED.

2.3. PROHIBITED ACCESS. YOU MAY ACCESS THE SERVICES SOLELY FOR YOUR OWN LAWFUL BUSINESS OR PERSONAL USE AND YOU MAY NOT ACCESS THE SERVICES FOR COMPETITIVE ANALYSIS OR MONITORING THE AVAILABILITY OF THE SERVICE OR MEASURING ITS PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARK OR ASSESSMENT PURPOSE, WITHOUT PRIOR WRITTEN CONSENT FROM US. ANY PARTY OFFERING A COMPETITIVE PRODUCT OR SERVICE MAY NOT ACCESS THE SERVICES FOR ANY REASON.

3. ACCESS AND USE GRANT; RESTRICTIONS

3.1. Access Grant. Subject to the terms of this Agreement and applicable ordering document, We grant You a limited, non-transferable, non-exclusive license to use the Services during the Term detailed in the applicable ordering document, solely for Your own internal business purposes in accordance with the applicable Terms of Use.

3.2. Limitations. The rights granted hereunder are limited and the Services may only be accessed and used: (a) in the Territory as detailed in the relevant Order Form; (b) in accordance with the functional description of the Service(s) in the Documentation, including the relevant Order Form; and (c) in accordance with applicable Terms of Use for any related Software, including mobile application software, which is provided for use in connection with the Service.

3.3. Additional Use Restrictions. You may not use the Services outside the scope set out in this Agreement without Our prior written consent. You may not: (a) modify, alter, tamper with or make derivative works based upon the Services; (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services, except to the extent that applicable law specifically prohibits such restrictions; (c) access the Services in order to build a competitive product or service or copy any ideas, features, functionalities thereof; (d) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or access to the Services in any way; (e) copy or reproduce all or any part of the Services except as expressly permitted in this Agreement; or (f) access or use the Services in a way intended to avoid or exceed usage limits or quotas.

4. YOUR RESPONSIBILITIES

4.1. Client Software and Equipment. You are responsible for obtaining and maintaining all hardware, software and communications equipment necessary to access and use the Services and for paying all third-party access charges (e.g., ISP, telecommunications) incurred while using the Services. You acknowledge that minimum hardware, software, and communications requirements apply to use the Services.

4.2. Usage Limits. Unless otherwise provided in the applicable Order Form, the Services are purchased as time-limited Subscriptions and are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, a quantity in an Order Form refers to a specific number of End Users, and the Service or Content may not be accessed by more than that number of Users. If You exceed a contractual usage limit, You agree to reduce Your usage so that it conforms to the limit or execute an Order Form for additional quantities of the applicable Services promptly upon Your request, and pay any undisputed invoice for excess usage in accordance with payment terms in the applicable Order Form and this Agreement.

4.3. Actions of End Users. You are responsible for Your actions, including the actions of End Users, while using the Services, and for the contents of Your and their transmissions through the Services. You agree to ensure that You and all End Users will (a) abide by all Laws applicable to use of the Services; (b) not upload or distribute Harmful Content; (c) not interfere with or disrupt the Services, the data contained therein or the networks connected thereto; (d) attempt to gain unauthorized access to the Services or its related systems or networks; and (e) notify Us immediately of any unauthorized use of any password or account or any other known or suspected breach of security.

4.4. Reserved.

4.5. Reserved.
5. **OUR RESPONSIBILITIES**

5.1. **Provision of Services.** We will make the Services available to You pursuant to this Agreement and the applicable Order Forms and Terms of Use. We may provide Services in association with Affiliates or contractors, in accordance with the terms of this Agreement, including Confidentiality provisions.

5.2. **Protection of Your Data.** We will maintain administrative, logical and physical safeguards to protect the security, confidentiality and integrity of Client Data, as described in the Documentation. Safeguards will include measures designed to prevent unauthorized third-party access, as well as prevent access, use, or disclosure of Client Data by Our personnel except (a) in order to provide and improve the Services and prevent or resolve problems, and in accordance with the Confidentiality provisions in this Agreement and published Privacy Policy; (b) as compelled by law as described in this Agreement; or (c) as You expressly permit in writing.

5.3. **Satisfaction of Your Rights.** Unless otherwise set forth in the Documentation or Relevant Order Form, we will use commercially reasonable efforts make the Services available 24 hours a day, 7 days a week, except for: (a) limited planned maintenance downtime, of which We shall give at least 8 hours advance electronic notice and which We shall schedule to the extent practicable during non-business hours; (b) Evaluation, no cost, or Beta Test limited license use; (c) use of specific features as a beta test participant; or (d) any unavailability caused by circumstances beyond our reasonable control, such as Force Majeure, Internet service provider failure or delay, Network hosting provider failure or delay, or denial of service attack.

5.4. **Support.** Unless otherwise set forth in the Documentation or Relevant Order Form, and with the exception of Evaluation, no cost, or Beta Test limited license use of the Services, we will provide Our standard support for the purchased Services to You as specified in the applicable Order Form. Unless otherwise specified on the applicable Order Form, standard support shall mean email-based support with next-business day response. For Evaluation, no cost, or Beta Test limited license use, unless otherwise set forth in writing to the contrary, support shall only be provided in Our sole discretion.

5.5. **Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

5.6. **Modifications to the Services.** We may issue modifications to the Services from time to time according to Our development schedule ("Updates") for which We maintain exclusive control. We are under no obligation under this Agreement to provide any Updates to the Services.

6. **PROPRIETARY RIGHTS AND LICENSES**

6.1. **Reservation of Rights.** We and Our licensors reserve all respective right, title and interest in and to the Services, including all related intellectual property rights, and including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask works, design rights, and any other intellectual property ("IP Rights") that may arise with respect to the Services. We and Our licensors retain all right, title and interest in and to the Services, including all related IP Rights.

6.2. **License Grant.** To the extent You upload code or other software as a part of this license and with respect to Your logo or trademarked intellectual property, You retain all right, title and interest to Your copyrights, trademarks, service marks, trade names and all other proprietary intellectual property (collectively "Client IP").

6.3. **License Grant for Client Data and Client IP.** In order to enable provision of the Services, You grant Us a worldwide limited-term license to host, copy, process and display Client Data, subject to limitations of Confidentiality and the applicable Privacy Policy. This license is granted for the duration of any Subscription term, plus any retention period following termination of a Subscription term, which, under any circumstances shall not exceed one year. To the extent You choose to include Client IP in Client Data (for example, adding a logo to a personalized web page) You grant Us a similar worldwide limited-term license to host, copy, process and display such Client IP, only as necessary to provide You the Services.

6.4. **License Grant for Anonymized Data.** You grant Us a perpetual, non-exclusive, worldwide right and license to retain, use, adapt, display, and distribute Anonymized Data, whether derived from Client Data or another source, without restriction. By definition, Anonymized Data excludes Personal Information.

6.5. **Reserved.**

7. **RESERVED.**

8. **RESERVED.**

9. **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

9.1. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. **Our Warranty.** With the exception of Evaluation, no cost, or Beta Test limited license use, We warrant that (a) this Agreement, relevant Order Forms, and the Documentation accurately describe the safeguards in place for protection of the security, confidentiality and integrity of Client Data, (b) the Services will function in all material respects as specified in the Documentation, and (c) We will not materially decrease the overall security of the Services during a Subscription term. Our Warranty does not apply to (a) improper use of the Service including any unauthorized use by You or any End User with Section 5 hereof, (b) errors or problems in Your network or equipment (c) interruptions in Internet access or other downtime caused by network or third party services; or (d) problems caused by any breach by You of Your obligations under this Agreement.

9.3. **Your Warranty.** You warrant that you have obtained all authorizations, consents and licenses necessary to fully perform this Agreement, to use the Services, to access Client Data provided thereto, and for Us to use the Client Data as permitted in this Agreement.

9.4. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE DO NOT WARRANT THAT THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, NOR THAT THE SERVICE WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE AND AGREE THAT WE EXERCISE NO CONTROL OVER, AND ACCEPT NO RESPONSIBILITY FOR, YOUR COMPLIANCE WITH ANY LAW OR REGULATION APPLICABLE TO YOU OR YOUR END USERS. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

9.5. **No Warranty for High Risk Activities.** We specifically disclaim any express or implied warranty of fitness of the Services for usage where the use or failure of the Service could lead to death, personal injury or environmental damage ("High Risk Activities"), including for example the operation of nuclear or chemical processing facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems environments.

10. **RESERVED.**

11. **LIMITATION OF LIABILITY**
11.1. Reserved.
11.2. Reserved.
11.3. Reserved.
11.4. Reserved.
11.5. **Amazon Web Services.** In connection with providing access to the Services and performing Our obligations hereunder, We use and rely upon certain cloud computing and web hosting services provided by Amazon Web Services, Inc. (“AWS”) pursuant to terms and conditions as approved by GSA.

12. RESERVED.

13. **LAWS AND COMPLIANCE**

13.1. **Data Privacy Laws.** You agree to comply with all applicable data protection and privacy Laws, including all Laws that govern Your provision of Personal Information to Us so that We may process such Personal Information as contemplated by this Agreement. We agree to comply with all data protection and privacy Laws that are applicable to Us in provision of the Services. To the extent that You have legal requirements that reasonably must be executed by Us, You agree to specify such requirements in a Security Schedule, and the parties will engage in good faith efforts to accommodate those requirements to the extent technically feasible.

13.2. **Third Party Requests.** We will respond to third party requests about Your Client Data or use of the Services by You or End Users, to the extent any response is required by applicable law. In order to facilitate resolution of these requests, We may pass them on to You or provide contact information for You to such third party. We will notify You of any such request compelling Us to provide Your Client Data to a third party, prior to providing such data, unless notification is legally prohibited or we have reasonable cause to believe such notification could cause harm.

14. RESERVED.

15. **GENERAL PROVISIONS**

15.1. Reserved.
15.2. Reserved.
15.3. Reserved.
15.4. Reserved.
15.5. Reserved.
15.6. Federal Use. In the event that the Software or Services under this Agreement can be construed as “commercial computer software” as that term is described in DFAR 252.227-7014(a)(1), then, if access is acquired by or on behalf of a civilian agency, the US Government acquires this access to commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement and as specified in 48C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations (“FAR”) and its successors. If access is acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this access to commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

15.7. Reserved.
15.8. Reserved.
15.9. Reserved.
15.10. Reserved.
15.11. Reserved.
15.12. Reserved.
15.13. Reserved.
15.15. Reserved.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Nutanix ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.26 (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NUTANIX END USER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY
READ THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") BEFORE DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING NUTANIX SUPPORT AND/OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT AND, IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT:

- DO NOT ORDER OR PURCHASE THE SOFTWARE
- DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN "ACCEPT" BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE
- DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT

This Agreement is between You, on behalf of the company, partnership or business entity that You represent ("You" or "Your") and either (a) Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA if the Software was purchased in the United States, Mexico or Canada; or (b) Nutanix Netherlands, B.V. incorporated and registered in The Netherlands with its registered office at Scorpius 100, 2132 LR Hoofddorp, The Netherlands, if the Software was purchased in any other country ((a) and (b) are referred to herein as "Nutanix").

"Software" means any Nutanix software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to You as well as to any copies (whether complete or partial) made by or on Your behalf, including without limitation firmware. The term "Software" also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to You. "Documentation" means any on-line read me, help files, or other explanatory materials related to the Software.

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1. License Grant and Entitlement. The Software and Documentation are licensed, not sold, to You by Nutanix. This Agreement confers no title or ownership and is not a sale of any rights in the Software. Subject to the terms and conditions of this Agreement, the terms of Your entitlement which evidences Your authorization to use the Software and the authorized scope of use of the Software ("Entitlement"), and payment of the purchase price (and/or all fees, You are hereby granted a personal, limited, non-assignable, non-exclusive, non-sublicensable and non-transferable right to run one copy of the object code version of the Software on one authorized Nutanix system during the period of the license and for internal business operations only ("Permitted Use"). The Entitlement shall be specified in writing on the order or equivalent document issued by Nutanix or the party from whom You have lawfully acquired the products. The Entitlement shall specify the name of the product, the number of Licensed Units and the usage level and feature set authorized. Your Permitted Use is limited to the number of Licensed Units stated in Your Entitlement. "Licensed Unit" means the unit of measure by which Your use of Software is licensed, as described in Your Entitlement. If You have multiple Licensed Units, You may install and use as many copies of the Software as You have Licensed Units, in each case, on an authorized Nutanix system and only as permitted herein. Use of the Software outside the scope of Your Entitlement is unauthorized and void the warranty and/or support obligations of which You may otherwise be entitled. You agree to use Your best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. Nutanix and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to You. There are no implied licenses granted by Nutanix under this Agreement. Except as expressly specified above, You shall have no rights to the Software.

2. Use

2.1 Limitations on Use. You must not use the Software or Documentation except as permitted by this Agreement. You must not:

(a) alter, decompile, disassemble, modify, unbundle or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization;
(b) port, emulate the functionality, reverse compile, reverse assemble, reverse engineer, create derivative works, or otherwise reduce to human readable form or attempt to separate any of the components of the Software or derive the source code for the Software;
(c) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation, use the Software for the benefit of any third party or on a hosted basis;
(d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation or any product in which the Software is embedded
(e) disclose the results of testing, benchmarking or other performance or evaluation information related to the Software or the product to any third party without the prior written consent of Nutanix;
(f) access or use the Software or Documentation for any competitive purposes (e.g. to gain competitive intelligence; to design or build a competitive product or service, or a product providing features, functions or graphics similar to those used or provided by Nutanix; to copy any features, functions or graphics; or to monitor availability, performance or functionality for competitive purposes);
(g) use any "locked" or key restricted feature, function or capability without first purchasing the applicable license and obtaining a valid key, even if such feature, function or capability is enabled without a key; or
(h) distribute any copy of the Software to any third party, including as may be embedded in equipment sold in the secondhand market. You must not cause, encourage or permit any third party to do any of the foregoing.
2.2 Third Party Software. You acknowledge that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

3. Open Source Components. Software may use or include one or more of the open source software components listed in the Nutanix open source attribution file, which is available at www.nutanix.com/opensource. Please refer to the open source attribution file for the open source license disclosures and pertinent terms.

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5. Support. Nutanix’s support obligations for the Software, if any, are set forth in the Support Terms and Conditions, which may be found at http://www.nutanix.com/support/support-terms/. Nutanix does not provide any product maintenance or support services under this Agreement. Product maintenance and support services, if any, will be provided under a separate agreement. This Agreement does not entitle You to any product updates at any time in the future.

6. Term and Termination. This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if requested, You shall certify to Nutanix in writing that such return or destruction has occurred. The preamble as well as Section 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

7. NO WARRANTY. EXCEPT AS PROVIDED IN THE NUTANIX LIMITED WARRANTY, WHICH MAY BE FOUND AT EXHIBIT B (ATTACHED), YOU AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED “AS IS” AND THAT NUTANIX AND ITS LICENSORS MAKE NO OTHER WARRANTIES AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. NUTANIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF NUTANIX KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE OR HARDWARE OR ANY OTHER NUTANIX PRODUCTS. NUTANIX AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY THE NUTANIX SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, NUTANIX AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF NUTANIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY LOST REVENUES, GOODWILL OR PROFITS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE HARDWARE, SOFTWARE OR SERVICES, LOST DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, COMPUTER FAILURE OR MALFUNCTION. YOU AGREE THAT YOU SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE. IN ANY CASE, NUTANIX’S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF NUTANIX TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATIONS MAY NOT APPLY TO YOU IN WHICH CASE NUTANIX’S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Nutanix’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

8. Infringement. Subject to the remainder of this section, Nutanix shall defend or settle, at its own expense, any third-party action against You to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret, and will pay such damages or costs as are finally awarded against You attributable to such claim, provided that You (i) notify Nutanix promptly in writing of any such action, (ii) give Nutanix control of the defense and/or settlement of such action to the extent permitted by 28 USC 516, (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Should the Software become, or in the opinion of Nutanix be likely to become,
the subject of such an infringement claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (a) any method or process in which the Software may be used; (b) its compliance with Your specifically requested specifications or use of software which was not a newer release of the Software made available to You would have avoided the infringement; (d) the combination, operation or use of the Software with non-Nutanix products or services; or (e) use of the Software in a manner or for a purpose for which it was not intended. THIS SECTION SETS FORTH NUTANIX’S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIMS OR ACTIONS RELATED TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

9. Confidentiality. “Confidential Information” shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from no act or failure to act on Your part, generally known in the relevant industry or public domain; (c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.

10. Technical Information. You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services.

11. Compliance with Laws; Export Control. Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable country, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) You will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation" respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolia P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

12. Governing Law. To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive Federal laws of the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

13. Miscellaneous. If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties’ original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If You have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement, together with the terms of the GSA Schedule Contract, constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".

14. User Outside the U.S. If You are using the Software or Documentation outside the U.S., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Software and Documentation, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

EXHIBIT A - Support Terms & Conditions

1. SUPPORT. Customer is not entitled to support unless Customer has ordered and paid for Support as provided in the Order. Nutanix will use reasonable efforts to provide support services as described in these Support Terms and Conditions (“Support”) at the level Customer has purchased (e.g., Basic, Production or Mission Critical) for the term Customer has purchased, which commences upon Product shipment. Nutanix’s Support contact information is at www.nutanix.com/support. Support is contacted primarily through Nutanix’s web support portal (generally accessible on a 24x7x365 basis excepting periodic maintenance or network unavailability) and secondarily through telephone and email support. Nutanix’s Support obligation is limited to using reasonable efforts to remedy a reported failure of
the Products to substantially operate in accordance with Nutanix’s official specifications (a “problem”). Support does not include Hardware or Software installation, training, consulting services or preventative maintenance.

A. SOFTWARE SUBSCRIPTION. Support may include a subscription to new releases of the Software that are commercially released by Nutanix during Customer’s term of Support which may include bug fixes, patches releases, and major updates (“Releases”), but does not include enhancements or upgrades licensed by Nutanix for a separate fee at Nutanix’s discretion. Any Releases may only be installed as an update to the Customer’s original Software on the original Hardware. All Releases will be subject to the terms and conditions set forth in the GSA Schedule Contract of which these Support Terms and Conditions are a part, and the EULA or Click-wrap. Customer can download Releases from http://support.nutanix.com. Notwithstanding the foregoing, Nutanix has no obligation to deliver Release(s) to Customer. In addition, Nutanix does not guarantee that future Releases will be compatible with the Hardware Customer has purchased.

B. HARDWARE SUPPORT. If Nutanix determines that replacement parts are required for Support, and Hardware Support is included in the Support services purchased by Customer, then Nutanix will use reasonable efforts to deliver them to Customer, at no charge, by the target delivery time (“TDT”), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix’s TDT is 4 hours for Platinum Plus Service, and next business day for Gold and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non-critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if Customer’s location is remote and/or if common carrier encounter delays or require special transportation arrangements I reaching Customer’s site, or if customs clearances impose delays. Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix’s option. Defective parts must be returned to Nutanix. If Customer has purchased Nutanix no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix property. Unless Customer requests otherwise, Nutanix or a Nutanix subcontractor will typically provide on-site installation of the replacement part with Customer’s reasonable assistance.

C. SOFTWARE SUPPORT. Nutanix may provide Customer with Software Support as part of the Support Services package purchased by Customer. All problem classifications shall be determined by Nutanix in its sole and absolute discretion. Nutanix classifies Software problems as either: P1—Customer’s production use is stopped or so severely impacted that Customer cannot reasonably continue use of the Products; P2—important Product features are unavailable with no acceptable workaround, but Customer’s production use is continuing; P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but Customer’s production use is continuing; P4 — all other problems. Customer must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will use reasonable efforts to acknowledge Customer’s problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix’s sole discretion), Nutanix will provide on-site technical support in Nutanix’s discretion, and if so provided in Nutanix’s discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on-site Support. If Nutanix determines that Customer’s problem was not caused by Nutanix Products and if the onsite Support was requested by Customer, then Nutanix may invoice Customer Nutanix’s then-current daily time and materials rate under the GSA Schedule price list.

2. EXCLUSIONS. Nutanix will have no Support obligations for any conditions attributable to: (i) negligence or misuse or abuse of the Products; (ii) use of the Products other than in accordance with Nutanix’s official specifications; (iii) modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product with any non-Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.

3. CONDITIONS TO NUTANIX’S SUPPORT OBLIGATIONS. Customer needs to do the following as a condition to Nutanix’s provision of Support: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Nutanix who can contact Nutanix for Support, which persons are Customer’s only personnel entitled to contact Nutanix for Support; (iii) register all Products with Nutanix, and provide notice to Nutanix of all sites and site moves; (iv) provide Nutanix access to Customer’s site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support; (v) enable Nutanix’s automated alert system on the Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Product at Customer’s site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Nutanix; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Nutanix any of Customer’s systems data, information and other materials reasonably required by Nutanix for the Support (“Customer Materials”), the accuracy of which is Customer’s responsibility. Subject to Customer’s rights in the Customer Materials, Nutanix will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix’s personnel in connection with performing Support (“Nutanix Materials”), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no other rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Nutanix’s right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Nutanix to collect, process and use Customer’s data in order to perform Nutanix obligations to provide Support. Customer consents to these activities and to the transfer of the data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix. Nutanix will not be responsible for Customer’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair.

4. REINSTATEMENT OF SUPPORT. If Customer has not continuously purchased and complied with the terms and conditions of Support, Customer may request that Nutanix perform an inspection of the Products and any professional services Nutanix reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Nutanix’s certification, Customer may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix of: (i) for any Products that have been off Support for more than ninety (90) days; (ii) the pro rata Support fees that would have been payable at Nutanix’s then applicable annual rate of Support for
5. NON-TRANSFERABILITY. If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de-installation services to Customer at Nutanix’s then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Nutanix to receive such de-installation services. Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix’s then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii) obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive such de-installation services; Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix’s then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii) obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive such de-installation services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer. Customer’s remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix’s sole and absolute discretion.

6. RELATIONSHIP OF THE PARTIES. Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.

7. ENGLISH. All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Purchase Terms and Conditions of which these Support Terms and Conditions are a part and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et to Nutanix les documents connexes soient rédigés en anglais selon la volonté expresse des parties.

8. CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, which may be found at www.nutanix.com/support.

EXHIBIT B – LIMITED WARRANTY

1. EQUIPMENT. Nutanix warrants solely to Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the “Hardware Warranty Period”). Nutanix’s entire liability, and Customer’s sole and exclusive remedy, under this warranty will be for Nutanix, at Nutanix’s option: (i) to use reasonable efforts to repair the defective Hardware within a reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the Product for a refund of the amount paid for the Product and the pre-paid and unused portion of any remaining term of Support for the Product. If Customer has purchased Nutanix’s no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix’s property. Nutanix will not be responsible for Customer’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at www.nutanix.com/support.

2. REPLACEMENT PARTS. All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.

3. SOFTWARE. Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix’s official Product specifications for the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected. Nutanix’s entire liability, and Customer’s exclusive remedy, under this warranty will be for Nutanix, at Nutanix’s option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.

4. SERVICES. Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform within ten (10) days after the date on which such failure first occurs. Nutanix’s entire obligation, and Customer’s exclusive remedy, under this warranty will be for Nutanix, at Nutanix’s option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

5. EXCLUSIONS. Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix’s official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix’s typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix’s sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.

6. WARRANTY DISCLAIMER. EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE.
NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

7. HAZARDOUS USE RESTRICTION. THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION. 8. CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at www.nutanix.com/support.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached OpenGov, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 177 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800:2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
1. OPENGOV, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. SOFTWARE SERVICES

1.1 Subject to the terms and conditions of these OpenGov Terms and Conditions (the “Agreement”), OpenGov will use commercially reasonable efforts to perform the software services (the “Software Services”) identified in the applicable Software Agreement entered into by OpenGov and Ordering Activity (“Software Agreement”).
1.2 Ordering Activity understands that OpenGov’s performance depends on Ordering Activity timely providing OpenGov with a copy of the Ordering Activity’s chart of accounts in .csv or .xls format. In addition, Ordering Activity agrees to provide OpenGov with five or more years of general ledger data, also in .csv or .xls format, including budget data for the current year and actual expense and revenue data for past years. Any dates or time periods relevant to OpenGov’s performance will be extended appropriately and equitably to reflect any delays caused by Ordering Activity's failure to timely deliver any such materials. OpenGov shall not be liable for any delays in performance under this Agreement resulting from Ordering Activity’s failure to meet these obligations.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 This is a contract for access to the Software Services and Ordering Activity agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software Services, documentation or data related to the Software Services, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Software Services; or copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit, transfer, or encumber rights to the Software Services; or remove any proprietary notices.

2.2 Ordering Activity will use the Software Services only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions).

2.3 Ordering Activity shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access or otherwise use the Software Services and Ordering Activity shall also be responsible for (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) for all uses of Ordering Activity user accounts with or without Ordering Activity’s knowledge or consent.

3. OWNERSHIP. OpenGov retains all right, title, and interest in the Software Services and all intellectual property rights (including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature) therein.

4. RESERVED.

5. DATA LICENSE. Ordering Activity grants OpenGov a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information submitted by Ordering Activity to OpenGov for the development of new software or the provision of the Software Services.

6. RESERVED.

7. RESERVED.

8. WARRANTY AND DISCLAIMER

8.1 OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Software Services shall be performed in a professional and workmanlike manner in accordance with generally prevailing industry standards.

8.2 Ordering Activity represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data provided to OpenGov for use in and in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) OpenGov’s use of such materials in connection with the Software Services will not violate the rights of any third party.

8.3 OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. RESERVED.

10. RESERVED.
This End User License Agreement (this “Agreement”) is between ORock Technologies, Inc., a Delaware corporation (“ORock”), and the Ordering Activity under GSA Schedule Contracts (“Customer” or “Ordering Activity”). This Agreement sets forth the terms and conditions that govern sales or purchase orders (“Orders”) placed by Customer for Services under this Agreement. All capitalized terms used herein shall have the meaning set forth in Appendix I.

1. **TERM OF AGREEMENT**

This Agreement is valid for the Order(s) which this Agreement accompanies, unless terminated sooner as provided herein. Additionally, this Agreement will automatically terminate when the Service Periods for all Orders have ended. The agreement will remain valid for any extensions or modifications to the original order.

2. **RIGHTS GRANTED**

2.1. For the duration of the Services Period and subject to Customer’s payment obligations and other obligations set forth in this Agreement, and except as otherwise set forth in this Agreement or the Order(s), Customer has the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services selected in the Order(s), including anything developed by ORock and delivered to Customer as part of the Services subject to the terms of this Agreement, the Order(s), and the other Schedules referenced herein. Customer is responsible for Users’ compliance with this Agreement and the Order, as well as all User actions or inactions when using or accessing the Services.

2.2. Customer does not acquire under this Agreement any right or license to use the Services, including the ORock Software and ORock Infrastructure, in excess of the scope and/or duration of the Services stated in the Order(s) and the Service Descriptions. Upon the conclusion of the Services Period relating to the Services ordered, Customer’s right to access and use the Services will immediately terminate.

2.3. To enable ORock to provide Customer and Users with the Services, Customer grants ORock the right to use, process and transmit, as applicable, and in accordance with this Agreement and the Order(s), Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications for the duration of the Services Period plus any additional post-termination period during which ORock provides Customer with access to retrieve an export file of Customer Content and Customer Applications. If Customer Applications include third party software, Customer acknowledges that ORock may allow providers of the third-party Software to access the ORock Infrastructure, including Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications, as required for license compliance and/or the interoperability of such third-party Software with the Services.

2.4. Customer acknowledges that ORock has no delivery obligation for ORock Software and will not ship copies of such programs to Customer as part of the Services.

2.5. Certain Services may contain or require the use of Separately Licensed Third-Party Technology. Customer is responsible for complying with the Separate Terms specified by ORock that govern Customer’s use of Separately Licensed Third-Party Technology. If an Order includes Separately Licensed Third-Party Technology that requires Separate Terms, such Separate Terms will be set forth in the Order. ORock may provide certain notices to Customer in the Program Documentation, readme or notice files in connection with such Separately Licensed Third-Party Technology, and such notices will not bind the Ordering Activity to any Third-Party terms unless the terms are provided for review and agreed to in writing by all parties. The third-party owner, author or provider of such Separately Licensed Third-Party Technology retains all ownership and Intellectual Property rights in and to such Separately Licensed Third-Party Technology.

2.6. As part of certain Services, ORock may provide Customer with access to Third Party Content within the ORock Infrastructure. The type and scope of any Third-Party Content is defined in the Order(s). The Third-Party owner, author or provider of such Third-Party Content retains all ownership and Intellectual Property rights in and to that content, and such Third-Party Content may have additional terms applicable to such content as specified by such third-party owner, author or provider.

3. **OWNERSHIP AND RESTRICTIONS**

3.1. Customer retains all ownership and Intellectual Property rights in and to Customer Content, Customer Hardware, and Customer Applications, except as expressly provided herein. ORock or its licensors retain all ownership and Intellectual Property rights to the ORock Infrastructure, Services, including ORock Software and Ancillary Programs, Separately Licensed Third-Party Technology, and to anything developed or delivered by or on behalf of ORock under this Agreement. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.
3.2. Customer may not, or cause or permit others to:
   a) remove or modify any program markings or any notice of ORock’s or its licensors’ proprietary rights;
   b) make the programs or materials resulting from the Services (excluding Customer Content and Customer Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services Customer has acquired);
   c) modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the ORock Infrastructure or the Services (the foregoing prohibition includes, but is not limited to, review of data structures or similar materials produced by programs), or access or use the ORock Infrastructure or Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to ORock;
   d) perform or disclose any benchmark or performance tests of the Services, including the ORock Software;
   e) perform or disclose any of the following security testing of the ORock Infrastructure or the Services without ORock’s prior written consent: the ORock Assessment, network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing

3.3. The rights granted to Customer under this Agreement are also conditioned on the following:
   a) except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
   b) Customer makes every reasonable effort to prevent unauthorized third parties from accessing the Services.

4. THE SERVICES

4.1. The Services are subject to and governed by the Service Descriptions applicable to the Services subscribed and described in executed Order(s). At ORock’s discretion and at ORock’s expense, customer agrees to have a qualified third party conduct an ORock Assessment (audit) for compliance with the Service Descriptions, of the Customer’s intended use of the Services, including, but not limited to, any applicable Separately Licensed Third-Party Technology which is licensed by Customer or any Third-Party Software. Such ORock Assessment will be made pursuant to the terms set forth on Service Descriptions provided on the quote and accepted order. Customer acknowledges that use of the Services in a manner not consistent with the Service Descriptions on the Order may adversely affect Services performance and/or may result in additional fees in accordance with the GSA Pricelist. If the Services permit Customer to exceed the ordered quantity (e.g., limits on counts for Users, sessions, storage, compute, data transport, etc.), then Customer is responsible for promptly purchasing additional quantity to account for Customer’s excess usage and will be invoiced by ORock accordingly. Any such assessment will not happen more than once in a 12-month period and will be subject to applicable Government Security requirements.

4.2. ORock may make non-material changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) from time to time during the Services Period, including to reflect changes in technology, industry practices, governmental requirements, changes in applicable standards, patterns of system use, security, privacy, and availability of Third-Party Content. The Service Descriptions are subject to change at ORock’s discretion; however, ORock changes to the Service Descriptions will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Services Period.

4.3. The Order(s) will specify the Data Center Location in which the applicable Customer Hardware, Customer-Controlled Infrastructure, including, but not limited to any Customer Content, Separately Licensed Third-Party Technology which is licensed by Customer, and Customer Applications will reside on the ORock Infrastructure. As described in the order, Service Descriptions and to the extent applicable to the Services that Customer has ordered, ORock will provide production, test, quality assurance, and backup systems within the Customer Environment. ORock and its Affiliates may perform certain aspects of Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide. ORock will remain responsible for work performed by its Affiliates and/or subcontractors.

4.4. This Agreement may also be referenced for any purchase that increases the quantity of the original Services ordered, for any Services options offered by ORock for the original Services ordered and for any additional Services. Any additional Services ordered during the Services Period will be co-terminus with the Services on the original Order unless otherwise provided on the Order.

4.5. In the event that the Customer desires to utilize ORock’s Federal Authorization Application Services (“FAAS”), Customer and ORock will enter into a separate Professional Services Agreement in the form attached hereto as Schedule A, which will define the services to be performed in one or more statements of work. ORock may also perform certain Services in accordance with the terms of other professional services agreements to be mutually agreed upon between Customer and ORock.

5. USE OF THE SERVICES

5.1. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, Separately Licensed Third-Party Technology and Customer Applications, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. Customer is also responsible for controlling against unauthorized access to Customer-Controlled Infrastructure, except to the extent such unauthorized access is caused directly by ORock’s breach of its obligations under this Agreement. Customer shall ensure that Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications are free from malware, including without limitation, viruses, trojan horses and worms, that could affect the Services, ORock Infrastructure, ORock Software or any ORock Customers.
associating Customer’s and Users’ usernames, passwords and accounts with ORock, Customer accepts responsibility for the timely and proper termination of User records in Customer’s local (intranet) identity infrastructure or on Customer’s local computers. Customer is responsible for any actions taken by their Users in the Customer-Controlled Infrastructure. ORock is not responsible for any harm caused by Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not confidentially maintained or were not terminated on a timely basis in Customer’s local identity management infrastructure or Customer’s local computers. Customer is responsible for all activities that occur under Customer’s and Users’ usernames, passwords or accounts or as a result of Customer’s or Users’ access to the Services, and Customer agrees to notify ORock immediately of any unauthorized use of the Services, Customer-Controlled Infrastructure, or Customer Applications.

5.2. Customer agrees not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer Content, Customer Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters; (e) constitute an infringement of Intellectual Property or other proprietary rights, or (f) otherwise violate applicable Laws. In addition to any other rights afforded to ORock under this Agreement, ORock reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the temporary removal or disablement of access to such material. ORock shall have no liability to Customer if ORock takes such action; however, permanent removal or disablement of access to such material requires the Ordering Activity’s written consent or must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). Customer shall have sole responsibility for the obtaining appropriate consent for use, confidentiality, accuracy, quality, integrity, availability, legality, reliability, appropriateness and ownership, of all of Customer Content and Customer Applications.

5.3. Customer is required to accept all Patches, bug fixes, updates, maintenance and service packs (collectively, “Patches”) necessary for the proper function and security of the Services and the ORock Infrastructure, including for the ORock Software, as such Patches are generally released by ORock. Except for emergency or security-related maintenance activities, ORock will coordinate with its customers regarding the scheduling of application of Patches, where possible, based on ORock’s next available standard maintenance window.

5.4. Reserved.

6. FEES AND TAXES

6.1. All fees payable to ORock in accordance with the GSA Pricelist are due net 30 from the invoice receipt date which will not be issued until access is provided to Customer. The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this agreement. ORock shall state separately on its invoices that taxes are excluded from the fees and the Ordering Activity agrees to either pay the amount of the taxes to ORock or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6.2. Customer understands that Customer may receive multiple invoices for the Services it ordered. Invoices will be submitted to Customer pursuant to ORock’s invoicing policy.

6.3. Customer agrees and acknowledges that it has not relied on the future availability of any services, programs or updates in entering into the payment obligations in the Order(s); however, the preceding does not relieve ORock of its obligation during the Services Period to deliver Services that Customer has ordered per the terms of this Agreement.

7. SERVICES PERIOD; END OF SERVICES

7.1. Services provided under this Agreement shall be provided for the Services Period defined in the Order(s), unless earlier suspended or terminated in accordance with this Agreement or the Order.

7.2. Upon the end of the Services, Customer no longer has rights to access or use the Services, including the associated ORock Software and ORock Infrastructure; however, at Customer’s request, and for a period of up to ninety (90) days after the end of the applicable Services or such later date as mutually agreed between the parties, ORock will make available to Customer, Customer Content and Customer Applications as existing in the ORock Infrastructure on the date of termination. Customer will continue to pay for the Services during such ninety (90) day period at the then current GSA pricelist fees being charged to the Customer. At the end of such ninety (90) day period, and except as may be required by Law, ORock will delete or otherwise render inaccessible by Customer any of the Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications that remain in the ORock Infrastructure.

7.3. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ORock shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.4. If this Agreement is terminated by Customer for any other reason, Customer will pay to ORock, on the date of termination, the total amount due for all Services ordered and performed under the Agreement up to the date of termination.

7.5. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive including, but not limited to, Sections 3, 6, 7, 8, 11, 12, 15, 16, 18, 19, 20 and 21.
7.6. As part of the Services, ORock shall develop and upon Customer's approval, implement and perform all functions and services necessary to accomplish the successful transition to Customer as described in a transition plan ("Transition Plan") attached to or incorporated within the applicable Order (the "Transition Services"). ORock shall perform the Transition Services in accordance with the Transition Plan without causing a disruption to Customer's business. The Transition Plan shall include a Transition acceptance test for each Service that is transitioned that will ensure a complete and satisfactory transition of Services. ORock shall perform a posttransition review within thirty (30) days of the transition completion date to ensure stabilization of the transitioned environment. Any separate fees for the Transition Services shall be as set forth in the applicable Order and/or GSA pricelist.

7.7. During the period ORock is providing Transition Services, ORock shall maintain a "critical path analysis" for the transition project that will indicate the impact on the transition project time schedule and transition milestones based upon any occurrences of acts, omissions or breaches by ORock, Customer or third parties. ORock's critical path analysis shall be provided to and reviewed with Customer on at least a weekly basis and shall be presented to the management of Customer at each meeting during the transition project.

7.8. Certain Orders may require the transfer or management of equipment, facilities or third-party contracts to ORock. All such transfers or management responsibilities will be identified in the Order and shall contain additional terms and conditions with respect to such assets, as applicable.

8. NONDISCLOSURE

8.1. By this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). The parties each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to Customer Content, Customer Applications residing in the ORock Infrastructure, the specifications or other details of the ORock Infrastructure made available to Customer, all information clearly identified as confidential at the time of disclosure and all information that by its nature or the circumstances of its disclosure a reasonable person would conclude is confidential and/or proprietary. Other than Customer's use of the Cloud Services, Customer shall not provide any Personal Data (except business card information of Customer representatives), personally identifiable information, personal health information or other similar information to ORock.

8.2. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party, without the use of Confidential Information, as evidenced by written documentation.

8.3. The parties each agree not to disclose each other’s Confidential Information to any third party other than as set forth in the following sentence for a period of five (5) years from the termination of this Agreement; however, Customer’s Confidential Information that resides within the Customer-Controlled Infrastructure shall not be available to ORock in unencrypted form, and ORock shall not itself provide any such Customer Content to a third party, except as directed by Customer as part of Customer’s use of the Services. Each party may disclose Confidential Information only in connection with the Services and then only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. ORock shall protect the confidentiality of Customer Content or Customer Applications residing in the ORock Infrastructure in accordance with the ORock security practices applicable to the Order(s).

8.4. Nothing shall prevent either party from disclosing any information, including Customer Content or Confidential Information under this Agreement as required by Law; provided, however, in the event of the foregoing, the disclosing party shall provide advance written notification to the nondisclosing party.

8.5. Notwithstanding the foregoing, ORock recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

9. DATA PROTECTION AND SECURITY

9.1. In performing the Services, ORock will comply with the ORock Services Privacy Policy, which is attached hereto as Schedule F, and applicable to the Ordering Activity’s purchase of Cloud Services hereunder.

9.2. ORock shall be responsible for maintaining the Services and the ORock Base Infrastructure in accordance with the following:

   a) The Cloud Services and the ORock Base Infrastructure have each been Validated as set forth in the ORock Assessment.

      i. ORock will not materially reduce the overall level of controls identified in the ORock Assessment during the Services Period; ii. ORock will provide the Customer access to the ORock Assessment; and iii. Validation of each of the Cloud Services and the ORock Base Infrastructure demonstrates the Cloud Services and the ORock Base Infrastructure to be consistent with the NIST Framework for Improving Critical Infrastructure Cybersecurity.

9.3. Customer is responsible for the security of Customer-Controlled Infrastructure, and the Customer Applications. As a condition to using the Customer-Controlled Infrastructure in connection with the Services or ORock Base Infrastructure, Customer must satisfy, as determined in ORock’s sole discretion, the minimum requirements set forth in the Procedures Manual. Customer is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer’s configuration and use of the Customer-Controlled Infrastructure, Customer Content and Customer Applications, including, but not limited to, any viruses, Trojan horses, worms or other programming routines contained in Customer Content or Customer Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.
9.4. ORock’s Data Processing Terms for ORock Services (the “Data Processing Terms”), which is available at Schedule B and incorporated herein by reference, describes the parties’ respective roles for the processing and control of Customer Content that Customer provides to ORock as part of the Services. ORock will act as a data processor and will act on Customer’s instruction concerning the treatment of Customer Data residing in the ORock Infrastructure, including the Customer-Controlled Infrastructure, as specified in this Agreement, the Data Processing Terms and the applicable Order. Customer agrees to provide any notices and obtain any consents related to Customer’s use of the Services and ORock’s provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Customer Content.

9.5. COMPLIANCE WITH LAWS.

a) All Services hereunder shall be performed by ORock in compliance with all Laws as they relate to delivery of the Services or ORock’s business or operations, ("ORock Laws"). Without limitation to the foregoing, ORock shall reasonably cooperate with and assist Customer in complying with all Laws, including without limitation export Laws and import Laws of the United States and other countries, as applicable to Customer in connection with its receipt of the Services. Customer is responsible for complying with all Laws in connection with their use of the Cloud Services. Customer will conduct appropriate assessments, when combined with the ORock Assessment, will ensure that all Laws are met by Customer’s use of the Services.

b) The Services are designed to allow Customer to configure the Customer-Controlled Infrastructure, when combined with the ORock Base Infrastructure, to comply with Laws related to privacy and data security, including, but not limited to Gramm-Leach-Bliley Act of 1999 ("GLBA"), the Federal Information Security Management Act of 2002 ("FISMA"), and Massachusetts 201 CMR 17.00, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (collectively, "Privacy and Security Laws"). The Services are designed such that the Customer Content will be encrypted and ORock will not have access to the encryption keys; therefore, ORock will not have access to Customer Content and will not have the ability to take action relating to the Services necessary to implement the standards and requirements of HIPAA and regulations issued thereunder, any other Laws applicable to the exchange of health information by electronic means. GLBA, FISMA, and any other applicable Privacy and Security Laws regarding the privacy of information pertaining to individuals (collectively, Privacy and Security Compliance). Except as set forth herein, Customer shall be responsible for all such Privacy and Security Compliance.

c) If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") apply, ORock acknowledges that ORock may be a “school official” with “legitimate educational interests” in Customer Content, as those terms have been defined under FERPA and its implementing regulations, and ORock agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Customer understands that ORock may possess limited or no contact information for Customer’s students and students’ parents. Consequently, Customer will be responsible for obtaining any parental consent for any User’s use of the Services that may be required by applicable Law and to convey notification on behalf of ORock to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student’s parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer Content in ORock's possession as may be required under applicable Law. If Customer is a “covered entity” or a “business associate” and includes “protected health information” (as each of those terms are defined in 45 CFR § 160.103) in Customer Content, Customer’s Agreement includes execution of the HIPAA Business Associate Agreement (“BAA”), the full text of which identifies the Services to which it applies.

d) Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of ORock’s employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify the legal department of ORock at legalcompliance@orocktech.com.

e) Federal Acquisition Regulation flowdowns, as applicable. See Schedule C.

9.6. If ORock becomes aware of any unlawful access to any Customer Content stored on ORock Infrastructure, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Content (each a “Security Incident”), ORock will (1) promptly notify Customer of the Security Incident, but in any event within seventy two (72) hours; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. Notification(s) of Security Incidents will be delivered to one or more of Customer’s administrators by any means ORock selects, including via email. It is Customer’s sole responsibility to ensure Customer’s administrators maintain accurate contact information on each applicable Services portal. ORock’s obligation to report or respond to a Security Incident under this section is not an acknowledgement by ORock of any fault or liability with respect to the Security Incident.

9.7. ORock shall, upon Customer’s direction or governmental order, permit applicable government authorities to audit Customer Content and the Services and ORock Infrastructure, to the extent either directly relates to Customer Content. Customer hereby agrees and consents to such access and audits. In lieu of any audit or assessment by Customer of the ORock Infrastructure, ORock will provide Customer and any regulator of Customer who so requires, access to the ORock Assessment, subject to ORock’s reasonable security processes and requirements which may include coming to ORock’s premises for review.

9.8. By purchasing the Services, Customer agrees to the Data Processing Terms set forth as Schedule B.

9.9. As set forth above, the Services are designed to allow Customer to configure the CustomerControlled Infrastructure and Customer Applications, when combined with the ORock Base Infrastructure, to keep all of Customer Content that is Nonpublic Personal Information (as defined in the GLBA) and the Interagency Guidelines Establishing Information Security Standards adopted by the federal regulators of depository institutions (the “Security Standards”) confidential.
and will allow such maintenance and use of such information in accordance with applicable Laws, rules, and regulations, including but not limited to the GLBA. ORock acknowledges the importance of maintaining the security and integrity of Nonpublic Personal Information and agrees to take all steps reasonably necessary to provide Customer with the means to configure the Customer-Controlled Infrastructure to prevent the unauthorized disclosure or use of the Nonpublic Personal Information and to prevent the Nonpublic Personal Information from entering the public domain. ORock hereby represents and warrants that it is familiar with the Security Standards and agrees to provide Customer with the means to configure the Customer-Controlled Infrastructure to implement and maintain through the Services Period appropriate security measures designed to meet the objectives of the Security Standards, which include (i) ensuring the security and confidentiality of customers' Nonpublic Personal Information; (ii) protecting against anticipated threats and hazards to the security and integrity of such information; (iii) protecting against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customers; and (iv) ensuring the proper disposal of customers' Nonpublic Personal Information

10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

10.1. ORock warrants that it will perform Services in all material respects as described in the Service Description. If the Services provided to Customer were not performed as warranted, Customer must promptly provide written notice to ORock that describes the deficiency in the Services (including, as applicable, the service request number notifying ORock of the deficiency in the Services).

10.2. In the event that Customer places Customer Hardware in any of the Customer-Controlled Infrastructure, the warranties contained in this Agreement shall be invalid, the Data and Security Provisions set forth in Section 9 will be inapplicable, the Service Level Agreement, or SLAs, set forth in Schedule D will be inapplicable, and the Support Agreement set forth in Schedule E will be inapplicable, and ORock will not provide any indemnification related to the Customer Hardware or ORock Infrastructure.

10.3. ORock does not guarantee that (a) the Services will be performed error-free or uninterrupted, or that ORock will correct all Services errors, (b) the Services will operate in combination with Customer Content or Customer Applications, or with any other hardware, software, systems or data not provided by ORock, (c) the Services will meet Customer’s Requirements, specifications or expectations and (d) the functionality or security of Customer-Controlled Infrastructure. Customer acknowledges that ORock does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. ORock is not responsible for any delays, delivery failures, or other damage resulting from such problems. ORock is not responsible for any issues related to the performance, operation or security of the Services that arise from Customer Content, Customer Applications or Third-Party Content. ORock does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of Third-Party Content or Separately Licensed Third-Party Technology, and disclaims all liabilities arising from or related to Third Party Content and Separately Licensed Third-Party Technology.

10.4. For any breach of the Services warranty, Customer’s exclusive remedy and ORock’s entire liability shall be the correction of the deficient Services that caused the breach of warranty, or, if ORock cannot substantially correct the deficiency in a commercially reasonable manner, Customer may end the deficient Services and ORock will refund to Customer the fees for the terminated Services that Customer pre-paid to ORock for the period following the effective date of termination.

10.5. To the extent not prohibited by Law, these warranties are exclusive and there are no other express or implied warranties or conditions, including, but not limited to, for software, hardware, systems, networks or environments or for merchantability, satisfactory quality, non-infringement, quiet enjoyment, fitness for a particular purpose or any warranties arising out of any course of dealing or usage of trade.

10.6. Reserved.

11. LIMITATION OF LIABILITY

Neither ORock nor its Affiliates will be liable for any indirect, incidental, special, punitive, or consequential damages, or any loss of revenue or profits, data, or data use, even if a party has been advised of the possibility of such damages. Further, neither ORock nor any of its Affiliates or licensors will be responsible for any compensation, reimbursement, or damages arising in connection with: (a) Customer’s inability to use the Services, including as a result of any (i) termination or suspension of this Agreement or Customer’s use of or access to the Services in accordance with these ORock and Contract Disputes Act, (ii) [reserved], or, (iii) without limiting any obligations under the SLA, any unanticipated or unscheduled downtime of all or a portion of the Services for any reason, including as a result of power outages, system failures or other interruptions; (b) the cost of procurement of substitute goods or services; or (c) CustomerControlled Infrastructure. ORock’s maximum liability for all damages arising out of or related to this agreement and the Order(s), whether in contract or tort, or otherwise, shall not exceed, in the aggregate, the amount of the Contract Price paid. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from ORock’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

12. INDEMNIFICATION

12.1. Indemnification by ORock. Unless prohibited by applicable Law, ORock shall indemnify, defend and pay for any third party damages, losses, liabilities, fees and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) awarded by a court of competent jurisdiction or agreed to in a settlement arising from or related to a third party’s claim that the Services, ORock Software or ORock Base Infrastructure infringes, misappropriates or otherwise violates the third party’s US patents or copyrights (collectively “Intellectual Property Rights”). The foregoing indemnification is contingent upon Customer (i) notifying ORock promptly in writing, not later than 30 days after Customer receives notice of the claim (or sooner if required by applicable Law); (ii) giving ORock control of the defense and any settlement negotiations; and (iii) giving ORock the information, authority and assistance ORock needs to defend against or settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.
12.2. Indemnification Exclusions. Notwithstanding anything to the contrary in this Agreement, ORock shall not indemnify, defend or hold Customer harmless from or against Losses, to the extent the Losses arise from or relate to (i) Customer configuration of Customer-Controlled Infrastructure; (ii) Customer’s alterations or unauthorized use of the Services, ORock Software or ORock Base Infrastructure; (iii) Customer using a version of the Services, ORock Software or ORock Base Infrastructure which has been superseded, if the Losses could have been avoided by using an unaltered current version which was made available to Customer, (iv) Customer continuing to use the applicable Services, ORock Software or ORock Infrastructure after the end of the license, or (v) Customer Hardware, Customer Content, or Customer Applications. ORock will not indemnify Customer for any portion of an infringement claim that is based upon the combination of the Services, ORock Software or ORock Infrastructure with any products or services not provided by ORock, including without limitation the Customer-Controlled Infrastructure, Customer Applications, Separately Licensed Third-Party Technology, and Customer Hardware. ORock will not indemnify Customer to the extent that an infringement claim is based on Customer Content, Third Party Content or any other material from a third-party portal or other external source that is accessible to Customer within or from the Services. ORock will not indemnify Customer for infringement caused by Customer’s actions against any third party if the Services, ORock Software or ORock Infrastructure as delivered to Customer and used in accordance with the terms of this Agreement would not otherwise infringe any third-party Intellectual Property rights. ORock will not indemnify Customer for any Intellectual Property infringement claim(s) known to Customer at the time Customer’s rights to Services, ORock Software or ORock Infrastructure are obtained.

12.3. Infringement Claims. If ORock believes or it is determined that the Services, ORock Software or ORock Infrastructure or any part thereof may have violated a third party’s Intellectual Property Rights, ORock may choose to either modify the Services, ORock Software or ORock Infrastructure to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, ORock may end the license for, and require Customer to cease use of, in whole or in part, the Services, ORock Software and/or ORock Infrastructure and refund any unused, prepaid fees Customer may have paid to ORock for such Services. ORock Software and/or ORock Infrastructure. If such action materially affects ORock’s ability to meet its obligations under the relevant Order, then ORock may, at its option and upon 60 days prior written notice, terminate or modify the Order.

12.4. Reserved. Customer Controlled Infrastructure, Customer Content, Customer Hardware or Customer Applications.

12.5. This Section 12 provides Customer’s exclusive remedy for any claims or damages related to ORock’s alleged infringement, misappropriation or other violation of a third-party Intellectual Property right.

13. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

13.1. The Services may enable Customer to link to, transmit Customer Content to, or otherwise access, other web sites, content, products, services, and information of third parties. Customer acknowledges and agrees that ORock does not control and is not responsible for such web sites or any such content, products, services and information accessible from or provided through the Services, and Customer bears all risks associated with access to and use of such websites and Third-Party Content, products, services and information.

13.2. Any Third-Party Content made accessible by ORock in or through the ORock infrastructure or Services is provided on an “as-is” and “as available” basis without any warranty or any kind, and ORock hereby disclaims all warranties, whether express or implied, relating to Third Party Content. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledges that ORock is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, ORock reserves the right to take remedial action if any such content violates applicable restrictions under this Agreement, including the removal of, or disablement of access to, such content.

13.3. Customer acknowledges that: (i) the nature, type, quality and availability of Third-Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. ORock may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third-Party Content, Third Party Services or APIs. If any third-party ceases to make its Third-Party Content or APIs available on reasonable terms for the Services, as determined by ORock in its sole discretion, ORock may cease providing access to the affected Third-Party Content or Third-Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Customer’s obligations under this Agreement or the applicable Order, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

14. SERVICES TOOLS AND ANCILLARY PROGRAMS

14.1. ORock may use Tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Customer’s service requests. The Tools will not collect or store any of Customer Content or Customer Applications residing in the ORock Infrastructure, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Customer Content and Customer Applications) may also be used to assist in managing ORock’s product and service portfolio, to help ORock address deficiencies in its product and service offerings, and for license and Services management. Customer hereby grants ORock the right to use Customer Content and related metadata for the purposes identified above, the purposes identified in Section 15 below and for any related purpose. For purposes of this paragraph, ORock will use Customer Content and related metadata in an aggregated form.

14.2. As part of the Services, ORock may provide Customer with on-line access to download certain Ancillary Programs for use with the Services. If ORock does not specify Separate Terms for such Ancillary Programs, Customer shall have a non-transferable, non-
15. SERVICE ANALYSES

ORock may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the ORock Infrastructure in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as “Service Analyses”). ORock may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Content or Confidential Information in a form that could serve to identify Customer or any individual. ORock retains all Intellectual Property rights in Service Analyses.

16. EXPORT

Export Laws and regulations of the United States and any other relevant local export Laws and regulations apply to the Services. Customer agrees that such export Laws govern Customer’s use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer agrees to comply with all such export sanctions, Laws and regulations including the International Traffic in Arms Regulations, and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users and “deemed export” and “deemed re-export” regulations. Customer agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these Laws, or will be used for any purpose prohibited by these Laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

17. FORCE MAJEURE

Excusable delays shall be governed by FAR 52.212-4(f).

18. GOVERNING LAW AND JURISDICTION.

This Agreement is governed by the substantive and procedural of the Federal Laws of the United States of America. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Orders placed under it.

19. NOTICE

19.1. Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a dispute with ORock or if Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: ORock Technologies, Inc., 11921 Freedom Dr., Suite 1180, Reston, VA 20190; Attention: Contract Administrator.

19.2. To request the termination of Services in accordance with this Agreement, Customer must submit a service request to ORock at the address specified in the Order(s).

19.3. ORock may give notices applicable to ORock’s Services customer base by means of a general notice on the ORock portal for the Services and notices specific to Customer by electronic mail to Customer’s e-mail address on record in ORock’s account information or by written communication sent by first class mail or pre-paid post to Customer’s address on record in ORock’s account information. Customer agrees that it is solely responsible for maintaining accurate and up-to-date contact information on record with ORock.

20. ASSIGNMENT

Customer or ORock may not assign, directly or by operation of Law, this Agreement or give or transfer the Services (including the ORock Software) or an interest in them to another individual or entity without the prior written approval of the other party. Any attempted assignment in violation of the foregoing shall be void. The foregoing shall not be construed to limit the rights Customer may otherwise have with respect to Separately Licensed Third-Party Technology licensed under open source or similar license terms.

21. OTHER

21.1. ORock may modify this Agreement and any such modification to this agreement shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating these terms.

21.2. ORock is an independent contractor and the parties agree that no partnership, joint venture, or agency relationship exists between ORock and Customer. Each party will be responsible for paying our own employees, including employment related taxes and insurance ORock shall remain liable for the actions and services provided by ORock’s business partners, including any third-party firms retained by Customer to provide consulting services or applications that interact with the Services.

21.3. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

21.4. Except for actions for nonpayment or breach of ORock’s proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than six (6) years after the cause of action has accrued.
21.5. Customer shall obtain at Customer’s sole expense any rights and consents from third parties necessary for Customer Content, Customer Applications, and Third-Party Content, as well as other vendor’s products provided by Customer that Customer uses with the Services, including such rights and consents as necessary for ORock to perform the Services under this Agreement.

21.6. Customer agrees to provide ORock with all information, access and full good faith cooperation reasonably necessary to enable ORock to provide the Services and Customer will perform the actions identified in the Procedures Manual.

21.7. Customer remains solely responsible for Customer’s regulatory compliance in connection with Customer’s use of the Services. Customer is responsible for making ORock aware of any technical requirements that result from Customer’s regulatory obligations prior to entering into an Order governed by this Agreement. ORock will cooperate with Customer’s efforts to determine whether use of the standard ORock Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by ORock or changes to the Services.

21.8. ORock may audit Customer’s use of the Services not more than once in a 12-month period (e.g., through use of software tools) to assess whether Customer’s use of the Services is in accordance with the Order(s). Customer agrees to cooperate with ORock’s audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer’s normal business operations and shall be subject to Government Security requirements. Customer agrees to pay within 30 days of receipt of invoice any fees applicable to Customer’s or Users’ use of the Services in excess of Customer’s rights. Customer agrees that ORock shall not be responsible for any of Customer’s reasonable costs incurred in cooperating with the audit.

21.9. The purchase of Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other Order. Customer understands that Customer may purchase Services, Professional Services, or other service offerings, programs or products independently of any other Order. Customer’s obligation to pay under any Order is not contingent on performance of any other service offerings or delivery of programs or products.

21.10. Customer agrees that this Agreement and the information which is incorporated into this Agreement by written reference, together with the applicable Order, the underlying GSA Schedule Contract, and Schedule Pricelist, is the complete Agreement for the Services ordered by Customer and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

21.11. In the event of any inconsistencies between the terms of an Order and the Agreement, the Order shall take precedence. No third-party beneficiary relationships are created by this Agreement. The failure by ORock to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by ORock must be in writing to be effective.

APPENDIX 1

AGREEMENT DEFINITIONS

“Affiliate” means, with respect to any Person (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person (ii) any officer, director, manager, member or trustee of such Person, or (iii) any Person who is an officer, director, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms "controlling," "controlled by," or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least 50% of the directors, managers, or persons exercising similar authority with respect to such Person or entities.

“Ancillary Program” means any Software agent or tool owned or licensed by ORock that ORock makes available to Customer for use or download as part of the Services for purposes of facilitating Customer’s access to, operation of, and/or use with, the ORock Infrastructure. The term “Ancillary Program” does not include Separately Licensed Third-Party Technology.

“APIs” has the meaning set forth in Section 13.3.

“BAA” has the meaning set forth in Section 9.5(c).

“Confidential Information” has the meaning set forth in Section 8.1.

“Cloud Services” means, collectively all ORock Cloud Services as specified on customer quote and Order. The term “Cloud Services” does not include Professional Services.

“Customer Applications” means all Software, including, but not limited to, Third Party Software that Customer or Users provide, load onto, or create using, any Services. Services under this Agreement, including ORock Software, ORock Base Infrastructure, ORock Intellectual Property, are not included in the definition of “Customer Applications.”

“Customer Content” means all Customer Data and any additional data and information provided by third parties.

“Customer-Controlled Infrastructure” means the ORock Infrastructure that is provided to Customer as a part of Autonomous Cloud and/or other Cloud Services that allows Customer, as a feature of the Services, to configure or otherwise implement changes to the ORock Infrastructure for Customer’s purposes only, as set forth in the Procedures Manual.
“Customer Data” means all data and information (other than Software), whether held by Customer or Customer’s Affiliates, including all of Customer’s and its Affiliates’ Confidential Information, whether in written or electronic form, submitted to ORock by Customer or any of Customer’s Affiliates, or obtained, developed or produced by ORock in connection with the Services or otherwise reside in, or run on or through, or are used on the ORock Infrastructure, including, without limitation, information relating to Customer’s, or any of Customer’s Affiliates', underwriting information, process and methods, Customer Data, financial data, suppliers, employees, technology, operations, facilities, consumer markets, text, files, images, graphics, illustrations, audio, video, photographs, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Customer Data includes, any data derived from data created as a result of the Services, and any data that is produced as a result of calculations using, in whole or in part, Customer Data.

“Customer Hardware” means any Infrastructure provided by Customer to be placed in an ORock facility as part of the Customer-Controlled Infrastructure that is not otherwise approved in writing by ORock and in advance of installation.

“Data Center Location” refers to the physical location(s) of the ORock Infrastructure ordered by Customer. The Data Center Location applicable to the Services is set forth in the Order(s).

“Data Processing Terms” has the meaning set forth in Section 9.4.

“Environment” means the ORock Base Infrastructure and the Customer-Controlled Infrastructure that the Customer has ordered pursuant to the terms of an Order.

“FAAS” has the meaning set forth in Section 4.5.

“FAR” means the Federal Acquisition Regulations.


“FERPA” has the meaning set forth in Section 9.5(c).

“FISMA” has the meaning set forth in Section 9.5(b).

“Framework for Improving Critical Infrastructure Cybersecurity” means the Framework for Improving Critical Infrastructure Cybersecurity Version 1.0 issued by NIST pursuant to Executive Order 13636, as such Framework may be amended during the Services Period.

“GLBA” means Title V of the Gramm-Leach-Bliley Act of 1999 and the various regulations promulgated thereunder by the federal and state regulators of financial institutions.

“HIPAA” has the meaning set forth in Section 9.5(b).

“Infrastructure” means the core physical or hardware-based resources and components, including all information technology infrastructure devices, equipment and technologies, that comprise a data center. Infrastructure includes, as applicable, servers, computers, routers, switches, firewalls, biometric security systems, storage area network (SAN), flash storage, backup/tape storage, data center management software and related software. Infrastructure also includes non-computing resources, such as: power and cooling devices, air conditioners or generators, physical server racks and chassis, cables, and internet networking connection devices and entry points.

“Intellectual Property” means any and all Intellectual Property rights existing under any law or regulations, including without limitation patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law (together with all of the goodwill associated therewith), unfair competition law, publicity rights law, or privacy rights law, other proprietary rights, and applications, renewals, extensions and restorations of any of the foregoing, now or hereafter in force and effect worldwide. For purposes of this definition, rights under patent law shall include rights under any and all patent applications and patents (including letters patent and inventor’s certificates) anywhere in the world, including, without limitation, any provisional, substitutions, extensions, supplementary patent certificates, reissues, renewals, divisions, continuations in part (or in whole), continued prosecution applications, requests for continued examination, and other similar filings or stages thereof provided for under the Laws of the United States.

“Laws” means all applicable Laws (including common law), statutes, codes, rules or regulations, reporting requirements, ordinances, order, decree, judgment, consent decree, settlement agreement, or other pronouncement having the effect of law of the United States, any foreign country, or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority, or the NYSE or other self-regulatory authority, including, without limitation, HIPAA, GLBA, any other applicable Laws or regulations regarding the privacy of individuals’ information, the Foreign Corrupt Practices Act of 1977 (“FCPA”), Immigration Laws, and import and export Laws.

“Losses” has the meaning set forth in Section 12.1.

“NIST” means National Institute of Standards and Technology.


“Order” or “Order(s)” means the order or multiple orders for Services as set forth in a quote and executed by the applicable parties.

“ORock Assessment” means the assessment for certain Services described in the Service Descriptions set forth in the statement of work and/or Order.
"ORock Base Infrastructure" means the ORock Infrastructure that is not Customer-Controlled Infrastructure. For all Services purchased under FedRAMP, there is no Customer-Controlled Infrastructure.

"ORock Infrastructure" means the Infrastructure that ORock uses to provide the Services to Customer. ORock Software, Third Party Content, Customer-Controlled Infrastructure, Customer Content and Customer Applications may be hosted in the ORock Infrastructure.

"ORock Laws" has the meaning set forth in Section 9.6(a).

"ORock Software" refers to the Software owned or licensed by ORock, and to which ORock grants Customer access as part of the Services, including Program Documentation, and any Software updates provided as part of the Services. The term "ORock Software" does not include Separately Licensed Third-Party Technology.

"Patches" has the meaning set forth in Section 5.3.

"Person" means any individual, Company (whether general or limited), limited liability company, corporation, trust, estate, association, nominee, or other entity.

"Personal Data" means, unless otherwise defined under and international, federal or state Privacy or Data Security Law, any data about an individual maintained by ORock, including (1) any data that can be used to distinguish, identify, or trace an individual, directly or indirectly, by reference to that data such as, but not limited to: (i) name; (ii) identification number (including a social security number); (iii) date and place of birth; (iv) the name of the individual's parent or other family members; (v) biometric records; (vi) location data the individual or the individual's family; (vii) online identifier, including persistent identifiers that can be used to recognize a user over time and across different websites or online services; (viii) any other data, alone or combined with other information, that is linked or linkable to an individual, such as but not limited to medical, financial, educations, and employment data; or (ix) any data specific to the physical, physiological, genetic, mental, economic, culture or social identity of the individual. The term "Personal Data" includes (i) data: created or received by a health care provider, health plan, employer or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and (ii) provided by an individual to a financial institution, resulting from any financial transaction or financial service with an individual or otherwise obtained by a financial institution.

"Privacy and Security Compliance" has the meaning set forth in Section 9.5(b).

"Privacy and Security Laws" has the meaning set forth in Section 9.5(b).

"Procedures Manual" means the documentation provided to customers related to the operation of the Cloud Services.

"Professional Services" means, collectively, the consulting and other professional Services which Customer has ordered. Professional Services will be subject to a separate agreement between ORock and Customer. The term "Professional Services" does not include Cloud Services.

"Program Documentation" refers to the program user manuals for the ORock Services and ORock Software for applicable Services, as well as any help windows and readme files for such ORock Software that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the ORock Services and ORock Software.

"Security Incident" has the meaning set forth in Section 9.6.

"Security Standards" has the meaning set forth in Section 9.9.

"Separate Terms" refers to separate license terms that are specified in the Order, readme or notice files, or otherwise specified by ORock and that apply to Separately Licensed Third-Party Technology.

"Separately Licensed Third-Party Technology" refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement, and which may include, without limitation, open source Software. Customer Hardware may be Separately Licensed Third-Party Technology.

"Services" means, collectively, the Cloud Services implementation, training, support and other Services related to delivery of the Services that Customer has ordered and that ORock is obligated to provide pursuant to this Agreement.

"Service Analyses" has the meaning set forth in Section 15.

"Service Descriptions" means the descriptions that are applicable to the Services under the Order(s) and other descriptions referenced or incorporated in such descriptions as set forth in a statement of work and/or Order.

"Service Level Agreement" or "SLA" means the Service Level Agreement set forth on Schedule D.

"Support Agreement" means the Support Agreement attached hereto as Schedule E.

"Services Period" refers to the period for which Customer ordered Services as specified in the Order(s).

"Software" means any applications, operating systems, tools, utility programs, communications software, computer software languages, interfaces and any other computer programs (i.e., any set of statements or instructions, whether or not in a machine readable medium, to be used directly or indirectly in a computer in order to bring about a certain task or result), and documentation and supporting materials relating thereto, in whatever form or media, together with all corrections, improvements, modifications, updates, updates and new releases thereof.
“Spillage” NIST Special Publication 800-53 Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations defines “Spillage” as: Information Spillage refers to instances where either classified or sensitive information is inadvertently placed on information systems that are not authorized to process such information. Such information spills often occur when information that is initially thought to be of lower sensitivity is transmitted to an information system and then is subsequently determined to be of higher sensitivity. At that point, corrective action is required. The nature of the organizational response is generally based upon the degree of sensitivity of the spilled information (e.g., security category or classification level), the security capabilities of the information system, the specific nature of contaminated storage media, and the access authorizations (e.g., security clearances) of individuals with authorized access to the contaminated system.

“Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of ORock and made available to Customer through, within, or in conjunction with Customer's use of, the Services. Examples of Third-Party Content include data feeds, rss feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third-Party Technology.

“Third Party Services” has the meaning set forth in Section 13.3.

“Tools” has the meaning set forth in Section 14.1.

“Users” means those employees, contractors, and end users, as applicable, authorized by Customer or on Customer's behalf to use the Services in accordance with this Agreement and the Order(s).

“Validated” means that ORock has engaged an independent third party to assess the effectiveness of controls to the applicable NIST 800-53 controls listed in the ORock Assessment.

SCHEDULE A

FORM OF PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is made as of the date last signed below between ORock Technologies, Inc., a Delaware corporation with its principal place of business at 11921 Freedom Dr., Suite 1180, Reston, VA 20190 (“ORock”), and the Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”).

1. Professional Services.

OROCK shall provide consulting, integration, implementation, design, development, architecture reviews and other work under the terms and conditions of this Agreement (the “Services”), as specified in one or more statements of work that OROCK and Customer may enter into from time to time (each, an “SOW”).

2. Payment.

(A) Payment. In consideration of the Services rendered under this Agreement, Customer shall pay OROCK as set forth in each SOW. All payments hereunder are due net30 days from the receipt date of the invoice. Overdue payments are subject to a late interest charge governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. OROCK shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

(B) Reserved.


(A) Work Product. “Work Product” means the deliverable materials, including documentation and customized software, delivered by OROCK to Customer under a SOW, excluding any of Customer’s Confidential Information that may be included in such deliverables.

(B) Ownership of Work Product and Other Intellectual Property. Unless otherwise specified in the SOW, OROCK is the exclusive owner of all software (including the Work Product and revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other Intellectual Property that OROCK or its subcontractors may develop, conceive or deliver under this Agreement, including all patents, copyrights and other Intellectual Property rights thereto.

(C) License for Work Product. OROCK hereby grants, and Customer hereby accepts, a perpetual (unless terminated as set forth in Section 8(C)), non-exclusive, non-transferable, royalty-free license to use and modify the Work Product solely for Customer's internal business purposes. Customer may make a reasonable number of copies of the Work Product for backup, testing, disaster recovery or archival purposes only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the Work Product and does not remove any such marks from the original.

(D) Restrictions on License for Work Product.

(1) Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a “need to know” who are bound in writing by non-disclosure obligations suitable to protect OROCK’s interests in the Work Product...
but no less restrictive than Customer’s obligations herein), (b) copying (except as set forth in Section 3(C) above), or (c) sublicensing or other dissemination of the Work Product, in whole or in part, to any third party without OROCK’s prior written consent.

(2) Third Party and Other Proprietary Software. If the Work Product contains or is bundled with third party software or other proprietary ORock Software, then (a) such software is governed by ORock’s standard license agreement for such software or other applicable license agreement under which such software is provided to Customer, and (b) Customer may use such third-party software or other proprietary ORock Software solely for the purpose such software is included with the Work Product.

4. Warranty.

(A) Services Warranty. OROCK warrants that the Services it provides hereunder will be of a professional quality conforming to generally accepted industry standards and practices. If Customer discovers a deficiency in the Services, then Customer shall, within 30 days after completion of the deficient services, submit to OROCK a written report describing the deficiency in reasonable detail, and OROCK shall re-perform the deficient Services. If OROCK is unable to re-perform the Services, then, upon Customer’s request, OROCK shall refund any payments that Customer has made for such Services.

(B) Warranty Disclaimer. Other than the express warranties set forth in this Section 4, ORock disclaims all express and implied warranties as to any matter whatsoever, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. Customer’s sole remedy for breach of such express limited warranties is re-performance or refund as set forth in this Section 4.

5. Additional Obligations.

(A) Insurance. ORock shall maintain, at its own expense, sufficient insurance to cover its performance of Services hereunder, including but not limited to workers’ compensation insurance when required by law.

(B) ORock Personnel. ORock shall ensure that its employees and contractors performing the Services are reasonably qualified and experienced. ORock shall use its best efforts to replace any ORock employee or contractor that Customer reasonably requests to be replaced. ORock conducts background investigations of all its employees.


EXCEPT FOR SECTION 7, THE LIABILITY OF EACH PARTY AND ITS LICENSORS, SUPPLIERS AND SUBCONTRACTORS IS LIMITED IN ANY EVENT TO ACTUAL DIRECT DAMAGES TO THE EXTENT CAUSED SOLELY BY SUCH PARTY’S ACTS OR OMISSIONS, UP TO A MAXIMUM LIABILITY EQUAL TO THE AMOUNT OF THE CONTRACT PRICE. IN NO EVENT WILL EITHER PARTY OR ITS LICENSORS, SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. OROCK EXPRESSLY DISCLAIMS ALL LIABILITY ASSOCIATED WITH ANY THIRD-PARTY OPEN SOURCE CODE INCLUDED IN THE WORK PRODUCT. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY, DEATH, OR FRAUD IS HEREBY INTENDED. Neither party shall bring any action, whether in contract or tort, including negligence, arising out of or in connection with this Agreement, more than six (6) years after the cause of action has accrued.

7. Confidentiality.

(A) Confidential Information. As a result of the relationship entered into by the parties under this Agreement, the parties acknowledge that they may from time to time require or gain access to information that is confidential or proprietary to one another. All information disclosed by a party hereunder that (1) is in writing and marked with an appropriately restrictive legend indicating the confidential or proprietary nature of the information, (2) is disclosed orally and reduced to a writing marked with an appropriately restrictive legend promptly after the oral disclosure, or (3) by its nature or under the circumstances of its disclosure should reasonably be understood to be confidential is referred to herein as “Confidential Information.” Customer agrees that it will not provide any personally identifiable information to ORock.

(B) Obligations. The receiving party (1) shall hold all Confidential Information in confidence; (2) shall use the Confidential Information only for the purpose of performing its obligations under this Agreement; (3) shall reproduce the Confidential Information only to the extent necessary for such purpose; (4) shall restrict disclosure of the Confidential Information to its employees, consultants, agents and representatives with a need to know and who are bound to protect the confidentiality of such Confidential Information (and shall advise such employees, agents and representatives of the obligations assumed herein); and (5) shall not disclose or cause to be disclosed the Confidential Information to any third party without prior written approval of the disclosing party, except as allowed under (4) above.

(C) Exceptions. The foregoing restrictions do not apply to Confidential Information that (1) is or becomes a part of the public domain through no wrongful act or omission of the receiving party; (2) was in the receiving party’s lawful possession before the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party without reference to or in reliance on the Confidential Information; or (5) the disclosing party agrees in writing. ORock recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor is free of such restrictions.

(D) Reserved.

8. Termination.

(A) Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ORock shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
Survival. Except as otherwise specified in Section 8(C) below, Sections 3, 4, 6, 7, 8(B), 8(C) and 9 survive any termination of this Agreement.

Effect of Termination for Breach. If Customer materially breaches Section 3 above, then ORock may bring the matter to the Contracting Officer. upon OROCK’s request Customer shall, at OROCK’s option, either return to OROCK, or destroy and certify in writing to OROCK that it has destroyed, the original and all copies, in whole or in part, in any form, of the Work Product and any other Confidential Information disclosed by OROCK hereunder.


(A) Export Laws. The Work Product may subject to certain export control Laws and regulations that may restrict exports, re-exports and disclosures to foreign persons of cryptographic items. Performance of this Agreement is expressly made subject to any export Laws, regulations, orders or other restrictions imposed by any country or governmental entity on the Work Product or information relating thereto. Notwithstanding any other provision of this Agreement to the contrary, Customer shall not directly or indirectly import, export or re-export any Work Product or information pertaining thereto to any country or foreign person to which such import, export or re-export is restricted or prohibited unless Customer first secures, if applicable, an appropriate export license or other governmental approval. Customer unconditionally accepts full responsibility for compliance with these requirements.

(B) Governing Law. The validity, construction and performance of this Agreement shall be governed by the Laws of the United States of America. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Orders placed under it.

(C) Entire Agreement; Modification. This Agreement and each SOW, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitute the entire understanding between Customer and OROCK with respect to the subject matter hereof, and OROCK makes no representations to Customer except as expressly set forth herein or in the SOW. In the event of a conflict between this Agreement and a SOW, the SOW governs. Terms and conditions set forth in any purchase order or other document provided by Customer to OROCK in writing. This Agreement shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement of the parties hereto. The failure of either party, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term.

(D) Assignability. Neither party may assign this Agreement, or any of its rights or obligations hereunder, without the other party’s written consent, which consent shall not be unreasonably withheld.

(E) Severability. If any provision of this Agreement is for any reason held illegal or unenforceable, then such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.

(F) Notice. All notices given by either party to the other party under this Agreement shall be in writing and personally delivered or sent by guaranteed overnight courier, by registered or certified mail, return receipt requested, to the other party’s General Counsel, at its address set forth above.

(G) Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

(H) Counterparts. The parties may execute this Agreement in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

(I) Language. This Agreement has been drawn up in and shall be construed in accordance with the English language.

(J) Independent Contractors. The relationship between Customer and OROCK is solely that of independent contractors and not that of an agency, partnership, or joint venture. Neither party has the authority to represent or bind the other.

SCHEDULE B

DATA PROCESSING TERMS

The Data Processing Terms (DPT) include the terms in this section. Capitalized terms not set forth herein have the meanings ascribed to them in the Service Agreement.

The Data Processing Terms also include the “Standard Contractual Clauses,” pursuant to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of Personal Data to processors established in third countries under the EU Data Protection Directive. The Standard Contractual Clauses are enclosed as an attachment to the Data Processing Terms. In addition,

- Execution of the Service Agreement includes execution of Standard Contractual Clauses, which is countersigned by ORock Technologies, Inc. (“ORock”);
- The tterms in Customer’s Cloud Services Agreement (“Service Agreement”), including the DPT, constitute a data processing agreement under which ORock is the data processor; and
- The DPT control over any inconsistent or conflicting provision in Customer’s Service Agreement and, for each subscription, will remain in full force and effect until all the related Customer Data is deleted from ORock’s systems in accordance with the DPT.

Customer may opt out of the “Standard Contractual Clauses” or the Data Processing Terms in their entirety. To opt out, Customer must send the following information to ORock in a written notice (under terms of the Customer’s Service Agreement):

- the full legal name of the Customer and any Affiliate that is opting out.
• if Customer has multiple Service Agreements, the Service Agreement to which the opt out applies;
• if opting out of the entire DPT, a statement that Customer (or Affiliate) opts out of the entirety of the Data Processing Terms; and
• if opting out of only the Standard Contractual Clauses, a statement that Customer (or Affiliate) opts out of the Standard Contractual Clauses only.

In countries where regulatory approval is required for use of the Standard Contractual Clauses, the Standard Contractual Clauses cannot be relied upon under European Commission 2010/87/EU (of February 2010) to legitimize export of data from the country, unless Customer has the required regulatory approval.

In the DPT, the term “Cloud Services” applies to all ORock cloud services. “Customer Data” includes only Customer Data that is provided through use of those Cloud Services.

. Location of Customer Data at Rest

ORock operates a global network of data centers and management/support facilities, and processing may take place in any jurisdiction where data importer or its sub-processors operate such facilities. ORock does not control or limit the regions from which Customer or Customer’s end users may access or move Customer Data.

. Privacy

• **Customer Data Deletion or Return.** No more than 90 days after expiration or termination of Customer’s use of an Online Service, ORock will disable the account and delete Customer Data from the account.
• **Transfer of Customer Data.** Unless Customer has opted out of the Standard Contractual Clauses, all transfers of Customer Data out of the European Union, European Economic Area, and Switzerland shall be governed by the Standard Contractual Clauses. ORock will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.
• **ORock Personnel.** ORock personnel will not process Customer Data without authorization from Customer. ORock personnel are obligated to maintain the security and secrecy of any Customer Data as provided in the DPT and this obligation continues even after their engagement ends.
• **Subcontractor Transfer.** ORock may hire subcontractors to provide certain limited or ancillary services on its behalf. ORock shall remain liable for the actions and services provided by such Subcontractors at all times. Any subcontractors to whom ORock transfers Customer Data, even those used for storage purposes, will have entered into written agreements with ORock that are no less protective than the DPT. Customer has previously consented to ORock’s transfer of Customer Data to subcontractors as described in the DPT. Except as set forth in the DPT, or as Customer may otherwise authorize, ORock will not transfer to any third party (not even for storage purposes) Personal Data Customer provides to ORock through the use of the Cloud Services. ORock maintains a list of ORock Affiliates and Third Party Subprocessors authorized to access and/or process Customer Data in the Cloud Services as well as the limited or ancillary services they provide. At least 3 months before authorizing any new subcontractor to access Customer Data, ORock will update the list and provide Customer with a mechanism to obtain notice of that update. If Customer does not approve of a new subcontractor, then Customer may terminate the affected Online Service without penalty by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval. If the affected Online Service is part of a suite (or similar single purchase of services), then any termination will apply to the entire suite. After termination, ORock will remove payment obligations for the terminated Cloud Services from subsequent Customer invoices.

. Security

  - **General Practices.** ORock has implemented and will maintain and follow for the Cloud Services the following security measures, which, in conjunction with the security commitments in the Service Agreement, are ORock’s only responsibility with respect to the security of Customer Data.

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<tr>
<th>Domain</th>
<th>Practices</th>
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</table>

**Organization of Information Security**

- **Security Ownership.** ORock has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.
- **Security Roles and Responsibilities.** ORock personnel with access to Customer Data are subject to confidentiality obligations.
- **Risk Management Program.** ORock performs a risk assessment before initially processing the Customer Data or launching the Cloud Services service.
- ORock retains its security documents pursuant to its retention requirements after they are no longer in effect.

**Asset Management**

- **Asset Inventory.** ORock maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to ORock personnel authorized in writing to have such access.
  - ORock does not classify Customer Data.
  - ORock imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.
  - ORock personnel must obtain ORock authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside ORock’s facilities.

**Human Resources Security**

- **Security Training.** ORock informs and trains its personnel about relevant security procedures and their respective roles. ORock also informs and trains its personnel of possible consequences of breaching the security rules and procedures. ORock will only use anonymous data in training.

**Domain Practices**

<table>
<thead>
<tr>
<th>Domain</th>
<th>Practices</th>
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<tbody>
<tr>
<td>Physical Access to Facilities</td>
<td>ORock limits access to facilities where information systems that process Customer Data are located to identified authorized individuals only.</td>
</tr>
<tr>
<td>Physical Access to Components</td>
<td>Unless otherwise disclosed by customers, ORock maintains only limited records of the authorized senders/recipients, date and time, and that media is loaded to the Cloud Services.</td>
</tr>
<tr>
<td>Protection from Disruptions</td>
<td>ORock uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.</td>
</tr>
<tr>
<td>Component Disposal</td>
<td>ORock uses industry standard processes to delete Customer Data when it is no longer needed.</td>
</tr>
<tr>
<td>Domain</td>
<td>Practices</td>
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<tr>
<td><strong>Communications and Operations Management</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Operational Policy.</strong> ORock maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data. <strong>Data Recovery Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>- On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), ORock maintains single or multiple copies of Customer Data from which Customer Data can be recovered based on the particular Cloud Services.</td>
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</tr>
<tr>
<td>- ORock stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.</td>
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</tr>
<tr>
<td>- ORock has specific procedures in place governing access to copies of Customer Data.</td>
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<tr>
<td>- ORock reviews data recovery procedures at least every six months.</td>
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</tr>
<tr>
<td>- ORock logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process.</td>
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<tr>
<td><strong>Malicious Software.</strong> ORock has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks. <strong>Data Beyond Boundaries</strong></td>
<td></td>
</tr>
<tr>
<td>- ORock encrypts, or enables Customer to encrypt, Customer Data that is transmitted over public networks.</td>
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<tr>
<td>- ORock restricts access to Customer Data in media leaving its facilities.</td>
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<tr>
<td><strong>Event Logging.</strong> ORock logs, and enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.</td>
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<tr>
<td><strong>Access Control</strong></td>
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<tr>
<td><strong>Access Policy.</strong> ORock maintains a record of security privileges of individuals having access to Customer Data. <strong>Access Authorization</strong></td>
<td></td>
</tr>
<tr>
<td>- ORock maintains and updates a record of personnel authorized to access ORock systems that contain Customer Data.</td>
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<tr>
<td>- ORock deactivates authentication credentials that have not been used for a period not to exceed six months.</td>
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<tr>
<td>- ORock identifies those personnel who may grant, alter or cancel authorized access to data and resources.</td>
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</tr>
<tr>
<td>- ORock ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers, log-ins and authentication credentials.</td>
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</tr>
</tbody>
</table>
Least Privilege
- Technical support personnel are only permitted to have access to Customer Data when needed.
- ORock restricts access to Customer Data to only those individuals who require such access to perform their job function. **Integrity and Confidentiality**
- ORock instructs ORock personnel to disable administrative sessions when leaving premises ORock controls or when computers are otherwise left unattended.
- ORock stores passwords in a way that makes them unintelligible while they are in force.

**Authentication**
- ORock uses industry standard practices to identify and authenticate users who attempt to access information systems.
- Where authentication mechanisms are based on passwords, ORock requires that the passwords are renewed regularly.
- Where authentication mechanisms are based on passwords, ORock requires the password to be at least twelve characters long.
- ORock ensures that de-activated or expired identifiers are not granted to other individuals.
- ORock monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password.
- ORock maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.
- ORock uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.
- ORock may but is not required unless set forth in the Cloud Services, use customer data to enable additional authentication of Users that extends beyond current industry standard practices.

**Network Design.** ORock has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.

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<tr>
<th>Information Security Incident Management</th>
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</table>

**Incident Response Process**
- ORock maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the party reporting the breach, and to whom the breach was reported, and the procedure for recovering data.
- For each security breach that is a Security Incident, notification by ORock shall be made without unreasonable delay and, in any event, within 5 business days. A “Security Incident” is defined as any unlawful access to any Customer Data stored on ORock’s equipment or in ORock’s facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data.
- ORock tracks, or enables Customers to track, disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.

**Service Monitoring.** ORock security personnel verify logs at least every six months to propose remediation efforts if necessary.

<table>
<thead>
<tr>
<th>Business Continuity Management</th>
</tr>
</thead>
</table>

- ORock maintains emergency and contingency plans for the facilities in which ORock information systems that process Customer Data are located.
- ORock’s redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original or last-replicated state from before the time it was lost or destroyed.

**Cloud Services Information Security Policy**

Cloud Services and the ORock Base Infrastructure follow a written data security policy (“Information Security Policy”) that has been Validated against NIST Special Publication 800-53.
Subject to non-disclosure obligations, ORock will make each Information Security Policy available for review by Customer, along with other information reasonably requested by Customer in writing regarding ORock security practices and policies, all subject to ORock’s policies and procedures, which include onsite review.

Customer is solely responsible for reviewing each Information Security Policy and making an independent determination as to whether it meets Customer’s requirements.

If the Standard Contractual Clauses apply, then this section is in addition to Clause 5 paragraph f and Clause 12 paragraph 2 of the Standard Contractual Clauses.

. ORock Audits of Cloud Services

For each Cloud Service, ORock will conduct audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data (including Personal Data), as follows:

• Where a standard or framework provides for audits, an audit of such control standard or framework will be initiated at least annually for the Cloud Services.

• Each audit will be performed according to the standards and rules of the regulatory or accreditation body for applicable controls standard or frameworks.

• Each audit will be performed by qualified, independent, third party security auditors at ORock’s selection and expense.

• Each audit will occur not more than once in a 12-month period and will be subject to applicable Government security requirements.

Each audit will result in the generation of an audit report (“ORock Audit Report”), which will be ORock’s Confidential Information. The ORock Audit Report will clearly disclose any material findings by the auditor. ORock will promptly remediate material findings raised in any ORock Audit Report to the satisfaction of the auditor.

If Customer requests, ORock will provide Customer with access to each ORock Audit Report so that Customer can verify ORock’s compliance with the security obligations under the DPT. The ORock Audit Report will be subject to ORock’s policies and procedures, including strict non-disclosure and onsite review requirements.

If the Standard Contractual Clauses apply, then (1) Customer agrees to exercise its audit right by instructing ORock to execute the audit as described in this section of the DPT, and (2) if Customer desires to change this instruction, then Customer has the right to do so as set forth in the Standard Contractual Clauses, which shall be requested in writing.

If the Standard Contractual Clauses apply, then nothing in this section of the DPT varies or modifies the Standard Contractual Clauses or affects any supervisory authority’s or data subject’s rights under the Standard Contractual Clauses.

SCHEDULE C
FAR FLOWDOWNS

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SCHEDULE D SERVICE LEVEL AGREEMENT

This ORock Technologies, Inc. (“ORock”, “us” or “we”) Service Level Agreement (“SLA”) is a policy governing the use of ORock’s cloud products and other product offerings under the terms of the Agreement. This SLA applies separately to each account using ORock’s cloud products and other product offerings. Unless otherwise provided herein, this SLA is subject to the terms of the Agreement and capitalized terms will have the meaning specified therein. The terms of this SLA may be altered in accordance with the Agreement.

Service Commitment

ORock will use commercially reasonable efforts to make each of ORock cloud service available with a Monthly Uptime Percentage (as defined below), in each case during any monthly billing cycle (the “Service Commitment”). In the event ORock cloud services do not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

Definitions

- “Monthly Uptime Percentage” is calculated by dividing the difference between the total number of minutes in the monthly measurement period and any Unavailability in the measurement period, by the total number of minutes in the measurement period, the product of which is then multiplied by 100 to achieve a percentage. Monthly Uptime Percentage is calculated for each ORock cloud Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any SLA Exclusion (defined below).

- “Unavailable” and “Unavailability” mean:
  ▪ For ORock Private Autonomous Infrastructure, ORock Elastic Cloud and ORock On-Premise to Cloud, when all your running instances have no external connectivity and when all your attached volumes perform zero read write IO with pending IO in the queue.
  ▪ “Unavailable” and “Unavailability” expressly exclude outage periods consisting of the following:
    ▪ A failure or degradation of performance or malfunction resulting from scripts, data, applications, equipment, infrastructure, software, penetration testing, performance testing, or monitoring agents directed or provided or performed by you;
    ▪ Planned outages, scheduled and announced maintenance or maintenance windows, or outages initiated by ORock at the request or direction of Customer for maintenance, activation of configurations, backups or other purposes that require the service to be temporarily taken offline;
    ▪ Unavailability of management, auxiliary or administration services, including administration tools, reporting services, utilities, third party software components not within the sole control of ORock, or other services supporting core transaction processing;
    ▪ Outages occurring as a result of any actions or omissions taken by ORock at the request or direction of you;
    ▪ Outages resulting from your equipment, third party equipment or software components not within the sole control of ORock;
    ▪ Events resulting from an interruption or shut down of the services due to circumstances reasonably believed by ORock to be a significant threat to the normal operation of the services, the operating infrastructure, the facility from which the services are provided, access to, or the integrity of your data;
    ▪ Outages due to system administration, commands, or file transfers performed by Customer User or representatives;
    ▪ Outages due to denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of God, acts of civil disobedience, acts of war, terrorism, hostility, acts against parties (including carriers and ORock’s other vendors), and other force majeure events;
    ▪ Inaccessibility to access the services or outages caused by your conduct, including negligence or breach of your material obligations under the Agreement, or by other circumstances outside of ORock’s control;
    ▪ Lack of availability or untimely response time of you to respond to incidents that require your participation for source identification and/or resolution, including meeting your responsibilities for any services;
    ▪ Outages caused by failures or fluctuations in electrical, connectivity, internet network or telecommunications equipment or lines due to your conduct or any circumstances outside of ORock’s control.

- A “Service Credit” is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.

Service Commitments and Service Credits

Service Credits are calculated as a percentage of the total charges paid by you (excluding professional services or other one-time fees) for ORock Cloud Services, during the affected monthly billing cycle in which the Unavailability occurred in accordance with the schedule below.

<table>
<thead>
<tr>
<th>Service Commitment: Monthly Uptime Percentage – Single Node Instantiation - (99.9%)</th>
<th>Service Credit Percentage</th>
<th>Service Commitment: Monthly Uptime Percentage – Multi-Node Instantiation - (99.9%)</th>
<th>Service Credit Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 99.9% but equal to or greater than 99.0%</td>
<td>10%</td>
<td>Less than 99.99% but equal to or greater than 99.9%</td>
<td>10%</td>
</tr>
<tr>
<td>Less than 99.0%</td>
<td>20%</td>
<td>Less than 99.9%</td>
<td>20%</td>
</tr>
</tbody>
</table>

We will apply any Service Credits only against future ORock Cloud Services payments otherwise due from you. Service Credits will not entitle you to any refund or other payment from ORock. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide ORock Cloud Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

Service Credit Request and Payment Procedures

To receive a Service Credit, you must submit a written claim to the ORock NOC manager at nocoperations@orocktech.com. To be eligible, the Service Credit request must be received by us by the end of the billing cycle in which the incident occurred. The following information must be included in the written Service Credit request:
1. The words “SLA Service Credit Request” in the subject line;
2. The dates and times of each Unavailability incident that you are claiming;
3. The affected ORock cloud Service instance and Data Center Location; and
4. Your request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then we will issue the Service Credit to you within one billing cycle following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

. SLA Exclusions
The service level commitment does not apply to any unavailability, suspension or termination of ORock Cloud Services performance issues: (i) that result from a suspension described in the Agreement; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems that do not directly emanate from ORock Cloud Services; (iii) that result from any actions or inactions of you or any third party within the sole control of ORock; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (v) that result from failures of individual instances or volumes not attributable to Unavailability; (vi) that result from any maintenance or other outage as provided for pursuant to the Agreement; or (vii) arising from our suspension and termination of your right to use ORock Cloud Services in accordance with the Agreement (collectively, the “SLA Exclusions”). If availability is impacted by factors other than those used in our Monthly Uptime Percentage calculation, then we may issue a Service Credit considering such factors at our sole discretion.
### SCHEDULE E

**SUPPORT AGREEMENT**

<table>
<thead>
<tr>
<th>Hours of Service Desk Support:</th>
<th>Phone: 1-833-376-7625</th>
<th>7 days a week</th>
<th>24 Hours a day, 365 days a year</th>
</tr>
</thead>
<tbody>
<tr>
<td>eMail: <a href="mailto:nocoperations@orocktech.com">nocoperations@orocktech.com</a></td>
<td>7 days a week</td>
<td>24 Hours a day, 365 days a year</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Priority (Severity)</th>
<th>Target Response</th>
<th>Target Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - (Critical)</td>
<td>30 mins</td>
<td>1 Hour</td>
</tr>
<tr>
<td>2 - (High)</td>
<td>60 mins</td>
<td>2 Hours</td>
</tr>
<tr>
<td>3 - (Medium)</td>
<td>4 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>4 - (Low)</td>
<td>72 Hours</td>
<td>7 Days</td>
</tr>
</tbody>
</table>

#### Priority (Severity)

<table>
<thead>
<tr>
<th>Priority (Severity)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - (Critical)</td>
<td>An incident which involves service not available or a serious malfunction of the service with impact on ORock's direct delivery to single or multiple Customers</td>
</tr>
<tr>
<td></td>
<td>• Total loss of service to all Users and no work-around available</td>
</tr>
<tr>
<td></td>
<td>• Loss of functionality resulting in Customer Users/workgroups being unable to access the Services</td>
</tr>
<tr>
<td></td>
<td>• Unavailability of one or more Services</td>
</tr>
<tr>
<td>2 - (High)</td>
<td>An incident which involves service not available with impact on ORock's single or multiple Customers or a serious mal-function of the service with potential impact on ORock’s direct delivery to Customers</td>
</tr>
<tr>
<td></td>
<td>• Loss of functionality which severely impedes all or some material Services</td>
</tr>
<tr>
<td></td>
<td>• Customer’s Users/workgroups being unable to continue with normal business processing</td>
</tr>
<tr>
<td></td>
<td>• Partial loss of availability of one or more Services</td>
</tr>
<tr>
<td>3 - (Medium)</td>
<td>An incident that involves degradation or risk to quality of service with impact on one or more Customers</td>
</tr>
<tr>
<td></td>
<td>• Issue not impeding Customers’ Users/workgroups from being able to continue with normal business processing</td>
</tr>
<tr>
<td></td>
<td>• Potential to cause more serious issue if not investigated and addressed</td>
</tr>
<tr>
<td>4 - (Low)</td>
<td>An issue for which the final resolution is outside the control of ORock or does not substantially affect the Services. ORock will consider resolving the issue in a future release. General Service related questions and requests for information.</td>
</tr>
</tbody>
</table>

### SCHEDULE F

**PRIVACY POLICY**

**PLEASE READ THIS DOCUMENT CAREFULLY**

#### Introduction

ORock, Technologies Inc. respects your privacy and is committed to protecting it. This privacy policy applies to https://orocktech.com ("Website") and to all products and services offered by ORock (collectively, “ORock”, “ORock Platform”, “We”, “Us” or “Our”). This Privacy Policy
describes ORock’s policies and procedures on the collection, use and disclosure of your personal data when you use the ORock Platform. It also describes the choices available to you regarding the use of, your access to, and how to update and correct your personal data. We will not use or share your confidential information with anyone except as described in this Privacy Policy. This Privacy Policy does not apply to information we collect from other sources. This website is not intended for children and we do not knowingly collect data relating to children. Information which you do not designate as confidential may be publicly available and disclosed.

It is important that you read this Privacy Policy together with any other privacy notice or fair processing notice we may provide on specific occasions when we are collecting or processing personal data about you so that you are fully aware of how and why we are using your data. Our website and related services are hereinafter collectively referred to as our "services". We respect your privacy and are committed to maintaining and using any information we collect through your use of our services responsibly.

ORock is data processor for the processing of personal data in relation to ORock accounts and in relation to the use of our website. This Privacy Policy only concerns the processing for which ORock is data processor.

Please read this Privacy Policy carefully prior to accessing or using our services. If you do not agree with our policies and practices, your choice is not to use our Website. By accessing or using this Website, you agree to this Privacy Policy.

If you have any questions, please contact us at: privacy@orocktech.com

1. The Information We May Collect

Our primary purpose in collecting information from or about you is to provide you with a safe, smooth, efficient, and customized experience. Depending on the way you use our services, we collect information about you that we deem necessary for providing services and features that optimize, secure, and ease your user experience with ORock.

Personal Information or Personal Data ("PII"): ORock may collect and process information that could be directly or indirectly associated with you; information such as your full name, company name where applicable, user name and password, phone number, email address, billing or mailing address, credit/debit card information and other information that you share with ORock. You can choose not to provide us with certain information, but that may result in you being unable to use certain features of our services because such information may be required for you to register for an account; purchase products or services; participate in a contest, promotion, or survey; ask a question; or initiate other transactions on our website.

Payment Information: For the purposes of billing ORock accounts, we may request your credit card and certain contact information, such as a billing address. We retain credit card information internally for all payment processing related to our services. The payment information is necessary for you to use our services and failure to provide such information may result in you not being able to use our services.

Third Party Payment Processors: Payments processed via the ORock Platform by third party payment processors are subject to the terms of use and privacy policies of those payment gateways and are not accessible or controlled by ORock. For payments processed via third party payment processors, we may receive information related to your payment card type and last four digits, postal code, country of origin, and payment expiration date. For additional information, we recommend that you review the third-party payment processor's Privacy Policy.

Mobile Application: ORock offers a mobile application and may, depending on your privacy settings, collect certain information about you and your devices when you access our services through your mobile or other Internet connected devices. ORock does not ask for or purposefully track any precise location-based information. We use mobile analytics software to allow us to better understand the functionality of our services on your mobile or other Internet connected devices, which may record data relating to usage, performance, and download and will be treated like Demographic and Usage Data (discussed below).

Information from Third Party Platforms: You may allow our services to interact with one or more third party social networks or platforms (such as Facebook), which will provide data about you to us ("Platform(s)"). The information you allow ORock to access varies by Platform, and it is affected by the privacy settings you and those that you are established with while using such Platforms. Platforms are operated, controlled, and maintained by third parties that are not operated, controlled, or maintained by ORock. We recommend that you read the terms of use or service and privacy policies of those Platforms to understand how they collect and treat your data and what data they might share with us or other third parties.

2. Demographic and Usage Data: Cookies and Similar Technologies

ORock may collect information through the use of cookies, HTML5 local storage, and other similar technologies.

Cookies

"Cookies" are alphanumeric identifiers in the form of text files that are inserted and stored by your web browser on your hard drive. ORock may set and access cookies on your computer or wireless device to track and store preferential information about you. We may gather anonymous information about Users through cookie technology on an individual and aggregate level. Such information is used within ORock internally and is only shared with third party advertisers, if any, on an aggregated or non-personally identifiable basis.

You may opt out of receiving cookies from our website by following the instructions in your web browser. Note, however, that deleting cookies or directing your browser to refuse them may limit your ability to use certain portions of our website that require cookies to function. ORock gathers certain information automatically and stores it in log files. This information may include Internet protocol (IP) addresses, browser type, operating system, and other usage information about the use of our website, including a history of the pages you view.

Non-Personal Information: Web Beacons, Action Tags and Log Files

Web Beacons: Web Beacons, also known as pixel tags and clear GIFs, ("Web Beacons"), are electronic images that allow a website to access cookies and help track marketing campaigns and general usage patterns of visitors to those websites. Web Beacons can recognize certain types of information, such as cookie numbers, time and date of a page view and a description of the page where the Web Beacons are placed. No PII about you is shared with third parties through the use of Web Beacons on our website. However, through Web Beacons, we may collect general
information that will not personally identify you, such as: Internet browser, operating system, IP address, date of visit, time of visit and path taken through the website. In addition, we may also use web beacons in HTML-based emails sent to users to track which emails are opened by recipients.

**Action Tags**: ORock uses action tags. An action tag is a small piece of code that is placed on a webpage or in an email in order to track the pages viewed or the messages opened, the date and time when someone visited our website, the website from which the visitor came, the type of browser used, and the domain name and address of the user's Internet Service Provider. Action tags allow us to better understand how Users and visitors use the ORock Platform or browse through our pages, so that we can improve access to and navigation through the site, add or modify pages, according to our user's patterns. Action tags cannot be removed or deleted by our users, because they are part of the programming of a webpage.

**Log Files**: Log file information is automatically reported by your browser each time you access a web page. When you use the ORock Platform, our server automatically record certain information that your web browser sends out whenever you visit any website. These server logs may include information such as your web request, IP address, browser type, referring/exit pages, operating system, date/time stamp, the files viewed on our site (e.g., HTML pages, graphics, etc.) and URLs, number of clicks, domain names, landing pages, pages viewed, and other similar information.

**Behavioral Targeting**
ORock partners with a third party to either display advertising on our website or to manage our advertising on other sites. ORock’s third party partner may use cookies or similar technologies in order to provide you advertising based upon your browsing activities and interests. If you wish to opt out of interest-based advertising click here - [Unsubscribe]. Please note you will continue to receive generic ads.

**Do Not Track Signals**
ORock does not track or use Do Not Track signals.

Note: ORock may also collect other Non-Personal Information as visitors browse our website, such as the web traffic, what pages are visited, from where visitors come, and other demographic information, such as age, gender, and search habits. We may compile this Non-Personal Information to enable statistical analysis of our services that would be used internally or with external assistance to make improvements to our website and services.

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**. How We Use the Information We Collect & Disclosure of your PII**

All organizations need a legal reason to use your personal information. If they do not have one, they cannot use such information. There are legal grounds that enable data processing, and we will use your PII in accordance with applicable data protection legislation, this Privacy Policy and the General Data Protection Regulation (2016/679/EU) (“GDPR”). Below are the most relevant grounds you should be aware of with respect to ORock’s legal bases for using or disclosing your PII:

ORock may disclose any of your information, which in some cases includes PII, in the following situations:

1. With your consent. We may transmit your PII to a third party when you give us express permission to do so. For example, this may occur when we complete a transaction on your behalf or at your request.

2. To enter into or to fulfill a contract. We may use your PII to provide you with access to your account or other products you have signed up for.

3. For a legitimate interest. We may use your PII where it would help achieve ORock’s business objectives or to facilitate a benefit to you or someone else. Where we want to rely on legitimate interests as a legal basis, we will carry out a balancing test between our legitimate interests and your privacy rights.

4. With our authorized service providers. ORock may share your PII with our authorized service providers that perform certain services and process PII on our behalf. These services may include providing customer service and marketing assistance, performing business and sales analysis, supporting our website functionality, and supporting contests, sweepstakes, surveys and other features offered through our website. These service providers may have access to PII needed to perform their functions but are not permitted to share or use such information for any other purposes.

5. Payment providers and your bank. For the purpose of administrating payments within our services, we may disclose your PII to third party payment providers and your bank.

6. With our business partners. When you make purchases, reservations or engage in promotions offered through our website, we may share PII with the businesses with which we partner to offer you those products, services, promotions, contests and/or sweepstakes.

7. In connection with a substantial corporate transaction, such as the sale of our business; a divestiture, merger, consolidation, or asset sale; or in the event of bankruptcy. If another company acquires ORock, that company will take all responsibility for the information we collect, including PII, and it will assume all rights and obligations with respect to that information. Should this happen, the acquiring company may implement its own policies with respect to your information.

8. If we are required to disclose information by law. ORock may be obligated to disclose a User’s personal information, if directed by a court of law or other governmental entity. Without limiting the foregoing, we reserve the right to disclose such information where we have a good faith basis to believe that such action is necessary to: (a) comply with applicable laws, regulations, court orders, government and law enforcement agencies’ requests; (b) protect and defend ORock’s or third party’s rights and property, or safety of ORock, our users, our employees, or others; (c) prevent, detect, investigate and take measures against criminal activity, fraud and misuse or unauthorized use of our services and/or to enforce our Terms of Use or other agreements or policies; and/or (d) protect your personal safety or property or that of the public. In the event that your information is disclosed, we will comply with the law and make commercially reasonable efforts to notify you.

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**. Data Retention**

We will save your PII until six months after you erase your user account, or otherwise exercise your right to erase your PII, unless otherwise required by law.

### Access to Your Information and other rights

You are at any time, and free of charge, entitled to receive a copy of the PII that we hold about you and information about the processing thereof. Please note that in order to be able to answer your request, ORock will need to be able to determine your identity.

If you believe that any PII we are holding is incorrect or incomplete, please send an email with your specific request to privacy@orocktech.com. We will work with you to make any corrections deemed necessary. We may not accommodate a request to change information if we believe the change would violate any law or legal requirement or cause the information to be incorrect.

You have the right to request that ORock restricts the processing of your PII under certain conditions, for example, if you contest the accuracy of the PII, the processing may be restricted for a period enabling ORock to verify the accuracy of the PII or if ORock no longer needs the PII for the purposes of the processing but you require the PII for the establishment, exercise or defense of legal claims.

You have the right to have your PII deleted without undue delay and ORock is obliged to delete your PII without undue delay if, for example the PII is no longer necessary in relation to the purpose for which it was collected or otherwise processed. Please note that ORock is not obliged to delete the PII if ORock can show that the processing is necessary, for example, for the establishment, exercise or defense of a legal claim.

If you provide your email address to ORock, you will always have the opportunity to opt out of receiving email newsletters and promotions through the unsubscribe link in the email communications or by logging into and changing the preferences for your user account. We may send you other types of transactional and relationship e-mail communications, such as service announcements, administrative notices, and surveys, without offering you the opportunity to opt out of receiving them. Please note that changing information in your account, or otherwise opting out of receipt of promotional email communications will only affect future activities or communications from us. If we have already provided your information to a third party (such as a credit card processing partner) before you changed your preferences or updated your information, you may have to change your preferences directly with that third party.

You have the right to object, on grounds relating to your particular situation, at any time to ORock’s processing of your PII if the processing is based on, for example, legitimate interests. If you object to such processing, ORock will no longer be entitled to process your PII based on such legal basis, unless ORock can demonstrate compelling legitimate grounds for the processing which overrides your interests, rights and freedom or if it is conducted for the establishment, exercise or defense of a legal claim.

You have, under certain conditions, the right to receive the PII concerning you and which you have provided to ORock, in a structured, commonly used and machine-readable format and have the right to transmit such PII to another data controller without ORock trying to prevent this, where ORock’s processing of your PII is based a contract or consent and the processing is carried out by automated means. In such case you have the right to request that the PII shall be transmitted from ORock directly to another data controller, where technically feasible.

You also have the right to withdraw your consent, if applicable. If you withdraw your consent, please note that this does not affect the lawfulness of the processing based on your consent before its withdrawal and that ORock may, under certain circumstances, have another legal ground for the processing and therefore may be entitled to continue the processing.

If you would like to exercise your rights, you may contact us on the contact details provided at the bottom of this Privacy Policy.

If you are unhappy with our processing of your PII you may lodge a complaint with a competent supervisory authority, for example in the country of your habitual residence, place of work or of an alleged infringement of the General Data Protection or other applicable data privacy laws.

### Our Policy Concerning Children

Our Website is not intended for children under 13 years of age. Our website and services are offered and available only to you if you are 18 years or older, or if you are between 13 and 18 years old and have obtained the consent of a parent or legal guardian prior to accessing the website, registering an account, or using the services. If you do not meet this eligibility requirement, you may not use our website or services. ORock does not knowingly collect or store any personal information from or about children under the age of 13. If we learn we have collected or received personal information from a child under 13 without verification of parental consent, we will delete that information in conformity with the Children’s Online Privacy Protection Rule (“COPPA”). If you believe that ORock might have any information from or about a child under the age of 13 may submit a request to privacy@orocktech.com and request that such information be removed.

### Securing Your Information

ORock takes a range of security measures designed to protect your PII and keep it confidential (unless it is non-confidential by nature) and free from any unauthorized alteration. For example, only authorized employees are permitted to access personal information, and they may do so only for permitted business functions. In addition, we use encryption in the transmission of financial information between your system and ours, and we use firewalls to help prevent unauthorized persons from gaining access to your personal information.

Where we have given you (or where you have chosen) a password for access to certain parts of our website, you are responsible for keeping this password confidential. As the safety and security of your information also depends on the precautions you take, we ask you not to share your password with anyone.

### Third Parties and Other Information Collectors

Except as otherwise expressly included in this Privacy Policy, this document only addresses the use and disclosure of information we collect from you. To the extent that you disclose your information to other parties through our website, different rules may apply to their use, collection, and
disclosure of the personal information you disclose to them. Since we do not control the information use, collection, or disclosure policies of third parties, you are subject to their privacy policies.

Our website may include links to third party websites. Once you have used these links to leave our website, you should note that we do not have any control over third party websites. We are not responsible for the content of such websites or the protection and privacy of any information which you provide while visiting such sites. Third-party websites are not governed by this Privacy Policy. You should exercise caution and look at the privacy policies applicable to the websites in question.

. Users Outside of the United States

The services are hosted in the United States and are governed by the laws of the United States. If you are using the services outside the United States, please be aware that your information will be transferred to, stored, and processed in the United States where ORock’s servers and databases are located. By using the Sites, you consent to the transfer of information to countries outside your country of residence.

. Transfer of personal information to countries outside the EU/EEA

ORock is established in New York, USA. Your PII is therefore transferred outside the European Union ("EU") and European Economic Area ("EEA"). Such transfer is necessary for the performance of the contract between you and ORock (article 49.1 (b) of the GDPR).

Your PII is also transferred to and processed by third party payment providers. Such transfers are necessary for performance of the contract between you and ORock (article 49.1 (b) of the GDPR).

Some of the third parties identified above may also be located outside the EU/EEA, in which case we will take all necessary steps required under applicable law in order for such transfer of information across borders to be compliant with applicable law. In cases where there is no adequacy decision by the Commission, this may for example include the use of EU model clauses (under Article 46.2 of the GDPR) or ensuring that the recipient is certified under the US-EU Privacy Shield Framework (under Article 45 of the GDPR). You may receive a copy of the relevant safeguards by contacting ORock using the contact details set forth below in this Privacy Policy.

. No Rights of Third Parties

This Privacy Policy does not create rights enforceable by third parties or require disclosure of any personal information relating to users of the website.

. Changes to the Privacy Policy

We may review and update this Privacy Policy from time to time in our sole discretion and will notify you of such changes. It is our policy to post any changes we make to our Privacy Policy on this page with a notice that the Privacy Policy has been updated on the Website home page. If we make material changes to how we treat our users’ personal information, we will notify you by email to the primary email address specified in your account and/or through a notice on the Website home page. The date the privacy policy was last revised is identified at the top of the page. You are responsible for ensuring we have an up-to-date active and deliverable email address for you, and for periodically visiting our Website and this privacy policy to check for any changes.

Your continued use of the services after receipt of notification of changes to this Privacy Policy is deemed to be acceptance of those changes.

. Contact Us

Please note that we have appointed a Privacy Representative who is responsible for overseeing questions in relation to this Privacy Policy. If you have any questions about this Privacy Policy, including any requests to exercise your legal rights, please contact the Privacy Representative at privacy@orocktech.com. You may also write to C/O Privacy Representative, ORock Technologies, Inc; 11921 Freedom Drive, Suite 1180 Reston, Virginia 20190 or call 571-386-0201.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Palo Alto Networks, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

e) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 522.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1.1 Software License Grant. Subject to the terms and conditions of this EULA, Palo Alto Networks grants to End User a nonexclusive license to:

(i) use the Software solely as part of the Hardware with which the Software is delivered, or
(ii) in accordance with the published specifications. The Software is solely for End User’s internal business purposes unless otherwise agreed to with Palo Alto Networks in a separate written agreement. All other rights in the Software are expressly reserved by Palo Alto Networks.

1.2 Subscription Services Limited Right to Use. Palo Alto Networks grants to End User the limited right to use the Subscription Services solely in connection with the Hardware and/or Software and solely for End User’s internal business purposes.

1.3 License Restrictions. End User shall maintain the Products in strict confidence and shall not:

(a) except in accordance with Palo Alto Networks license transfer procedure (https://www.paloaltonetworks.com/support/support-policies/secondary-marketpolicy.html, for informational purposes only), sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means (unless otherwise permitted in writing by Palo Alto Networks as expressly agreed to in a separate Managed Security Services Provider agreement), including, without limitation, by uploading the Software or Subscription Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services;

(b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so;

(c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that use Palo Alto Networks (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.

1.4 Affiliates. If End User purchases the Product for use by any End User Affiliate (defined below), End User shall:

(a) provide each such End User Affiliate with a copy of this EULA;

(b) ensure that each such End User Affiliate complies with the terms and conditions therein; and

(c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, “Affiliate” means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where “Control” means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

2. OWNERSHIP.

The Software and Subscription Services are licensed, not sold. Palo Alto Networks retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent you provide any suggestions or comments related to the Products to Palo Alto Networks or its authorized third party agent, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or services, without your approval or further compensation to you.

3. RESERVED.

4. WARRANTY, EXCLUSIONS AND DISCLAIMERS.

4.1 Warranty. Palo Alto Networks warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Palo Alto Networks’ published specifications for a period of one (1) year from the date of shipment. As End User’s sole and exclusive remedy and not Palo Alto Networks’ and its suppliers’ liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for End User’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not.

4.2 Exclusions. The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks – authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks’ specifications; (iv) improper installation or site preparation or any failure by End User to comply with environmental and storage requirements for the Product specified by Palo Alto Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

4.3 Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED “AS IS”. PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END USER’S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

5. RESERVED.

6. RESERVED.

7. END USER DATA.

Palo Alto Networks utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of End User Data (defined below). End User is hereby notified and acknowledges that Palo Alto Networks Products may include interaction and communication with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may a low End User, in its sole discretion, to send data to Palo Alto Networks, where such data may contain personally identifiable, sensitive, and/or confidential data and information (collectively, “End User Data”). End User represents and warrants that End User’s use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Palo Alto Networks is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely incidental to the provision of the Subscription Services. Submission of End User Data to Palo Alto Networks shall be at End User’s sole discretion and at its own risk, and Palo Alto Networks assumes no responsibility for receipt of such End User Data. End User Data sent to Palo Alto Networks may be stored by Palo Alto Networks.

GS-35F-0511T
https://www.immixgroup.com/contract-vehicles/gsa/lt-70/0511T/
End User further acknowledges that Palo Alto Networks may anonymize such End User Data to use for statistical purposes and share samples of such anonymized End User Data with other third party security-related researchers, vendors and customers.

8. GENERAL.

8.1 Reserved.

8.2 Reserved.

8.3 Reserved.

8.4 Reserved.

8.5 Reserved.

8.6 Reserved.

8.7 U.S. Government End Users. This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are “commercial computer software” and “commercial computer software documentation,” respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this EULA.

8.8 Open Source Software. The Products may contain or be provided with components subject to the terms and conditions of open source software licenses (“Open Source Software”). A list of Open Source Software can be found at https://www.paloaltonetworks.com/company/third-party-software.html, for informational purposes only.

8.9 Reserved.

8.10 Authorization Codes, Grace Periods and Registration. Your Product may require an authorization code for activation for support of Your Product or to access Subscription Services. The authorization codes will be issued at the time of order fulfillment and sent to You via email. The service period will commence in accordance with the grace period policy at https://www.paloaltonetworks.com/support/support-policies/grace-period.html, for informational purposes only. You are hereby notified that, upon applicable grace period expiration, if any, Palo Alto Networks reserves the right to register Your Product and activate support services (if purchased) on Your behalf without further notification to You.

8.11 WildFire Related Microsoft Licenses. End User acknowledges that certain WildFire offerings require licenses for certain Microsoft software, including Windows and Office, as described further in the relevant Wildfire documentation. Where Microsoft software is provided with certain WildFire offerings, Palo Alto Networks has procured or otherwise provided the necessary Microsoft licenses for the WildFire offering. Customer is hereby notified and acknowledges that Microsoft updates and upgrades (software assurance) are not provided with the WildFire product and must be obtained by Customer directly from Microsoft in order for Customer to utilize later versions of Microsoft products beyond the versions initially provided with the WildFire offerings.

8.12 Reserved.
### Exhibit 1 to Attachment A

**GLOBAL CUSTOMER SUPPORT SERVICES TERMS AND CONDITIONS**

#### 1. SUPPORT PLANS AND SERVICES OFFERED

<table>
<thead>
<tr>
<th>Support Offerings</th>
<th>4 Hour Premium Support</th>
<th>Premium Support</th>
<th>Standard Support</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Office Hours Availability</strong></td>
<td>See <a href="https://support.paloaltonetworks.com">https://support.paloaltonetworks.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>After Hours Availability</strong></td>
<td>Yes - 24x7x365</td>
<td>Yes - 24x7x365</td>
<td>No</td>
</tr>
<tr>
<td><strong>Hardware Support</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Advance Replacement Service: Next Business Day Ship</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Return and Repair</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Call Response Times

<table>
<thead>
<tr>
<th>Severity 1 – Critical</th>
<th>&lt; 1 hour</th>
<th>&lt; 1 hour</th>
<th>&lt; 1 hour 7am – 6pm PST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product is down, critically affects customer production environment. No workaround yet available.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity 2 – High</th>
<th>2 Business Hours</th>
<th>2 Business Hours</th>
<th>2 Business Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product is impaired, customer production up, but impacted. No workaround yet.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity 3 – Medium</th>
<th>4 Business Hours</th>
<th>4 Business Hours</th>
<th>4 Business Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Product function has failed, customer production not affected. Support is aware of the issue and a workaround is available.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity 4 – Low</th>
<th>8 Business Hours</th>
<th>8 Business Hours</th>
<th>8 Business Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-critical issue. Does not impact customer business. Feature, information, documentation, how-to and enhancement requests from the customer.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Contacting Support

<table>
<thead>
<tr>
<th>Palo Alto Networks, Inc</th>
<th>Toll Free US – 1.866.898.9087</th>
</tr>
</thead>
<tbody>
<tr>
<td>4401 Great America Parkway</td>
<td>Outside the US +1.408.738.7799</td>
</tr>
<tr>
<td>Santa Clara, CA 95054</td>
<td>Website: support.paloaltonetworks.com</td>
</tr>
</tbody>
</table>

#### 2. DEFINITIONS

a) *Business Hours* means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and California holidays.

b) *Hardware* means the appliance and server agent products listed on Palo Alto Networks' then-current published product price list.
c) “Major Releases” means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

d) “Minor Releases” means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

e) “Maintenance Releases” means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

f) “Palo Alto Networks Standard Support,” “Palo Alto Networks Premium Support,” and “Palo Alto Networks 4 Hour Premium Support” refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.

g) “Palo Alto Networks Support Plans” means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.

h) “Palo Alto Networks Support Web Site” means the web site currently located at https://support.paloaltonetworks.com, or any successor site thereto, as specified by Palo Alto Networks.

i) “Products” means, collectively, Hardware and Software.

j) “Software” means the software products listed on Palo Alto Networks' then-current published product price list, including any software embedded in Hardware.

3. DESCRIPTION OF SUPPORT PLANS

Each Product under a Palo Alto Networks Support Plan must be registered by Customer in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Customer’s purchase of a Palo Alto Networks Support Plan, Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled “Support Plans and Services Offered” above, which are more fully described as follows: a) Technical Support

i. Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Customer.

ii. Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled “Support Plans and Services Offered” above.

b) Secure Web Access

i. Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.

ii. Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

Palo Alto Networks reserves the right to modify the support plans offered. Please refer to the Palo Alto Networks Support Web Site for the most current support plan descriptions.

4. SUPPORT OPTIONS

Customer shall choose from three support plans: (i) Palo Alto Networks Standard Support, (ii) Palo Alto Networks Premium Support, or (iii) Palo Alto Networks 4 Hour Premium Support.

Based upon the Customer’s selection and payment of the applicable fees per the purchase, Palo Alto Networks shall have the following obligations:

a) Palo Alto Networks Standard Support

i. Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.

ii. Make available all supported Maintenance Releases, Minor Releases and Major Releases.

iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases.

iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.

v. Provide technical telephone support Monday through Friday, excluding Palo Alto Networks’ designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.

vi. Provide a return and repair service for Hardware defects.

Customer may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled “Support Plans and Services Offered” above.

b) Palo Alto Networks Premium Support

Includes all of the support services described under Palo Alto Networks Standard Support plus the following:

i. After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.

ii. Provide a next business day ship advance replacement for Hardware defects.

c) Palo Alto Networks 4 Hour Premium Support

This support option is available only for Products located within a specified range of a Palo Alto Networks Service Location. Includes all of the support services described under Palo Alto Networks Premium Support plus commercially reasonable efforts by Palo Alto Networks to deliver the replacement hardware to the Customer within four hours.

5. RMA POLICY AND PROCESS

In those situations when it is necessary for Customer to return a Product to Palo Alto Networks, Customer must request Palo Alto Networks to issue a Return Material Authorization (RMA) Number prior to shipment. Each RMA Number will be uniquely identified and records will be maintained to record significant information regarding the processing of the Product.

a) Return and Repair: Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Customer shall package the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks...
location. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Customer.

b) **Advance Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Customer by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Customer. Upon receipt of a replacement Product, Customer shall return the defective Product to Palo Alto Networks in the replacement Product's packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), the airbill affixed to the exterior of the shipping carton and the designated courier service contacted for pickup. If Palo Alto Networks does not receive the returned Product within 10 business days after the date of Customer’s receipt of the replacement Product, Customer will be charged current list price of the replacement Product.

c) **4 Hour RMA Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Palo Alto Networks will use its commercially reasonable efforts to have a replacement Product delivered to Customer within four hours of the time the Customer receives an RMA number. Customer must have an authorized representative available to accept delivery of the replacement Product. If Palo Alto Networks (or its subcontractor) is unable to complete delivery because Customer does not have an authorized representative available, Palo Alto Networks reserves the right to charge Customer for costs incurred in making a subsequent delivery.

6. **CUSTOMER OBLIGATIONS**

During the term of this Agreement, Customer shall:

a) Operate at the then-current Maintenance Release; and

b) Use reasonable efforts to isolate, collect all error and log files to enable Palo Alto Networks to fulfill its obligations herein.

7. **LIMITATIONS**

The following services are expressly excluded from the Palo Alto Network Support Plans:

a) Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks -authorized personnel; (ii) accident, fault or negligence of Customer; (iii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operati on system software failure or any other damage and failure not caused by Palo Alto Networks.

b) Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Palo Alto Networks.

8. **RESERVED.**

9. **NO WARRANTY**

Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. PALO ALTO NETWORKS MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND PALO ALTO NETWORKS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. **RESERVED.**

11. **RESERVED.**
PERMUTA TECHNOLOGIES, INC.
6225 BRANDON AVE
SPRINGFIELD, VA 22150

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
PERMUTA TECHNOLOGIES, INC.

PERMUTA TECHNOLOGIES, INC. END USER LICENSE AGREEMENT

1. General Terms.
   1.1 Ordering. Ordering Activity must issue a purchase order for a Subscription to access Products. Ordering Activity may use Products as expressly permitted in the applicable Government Contract. Permuta reserves all other rights. Ordering Activity must acquire and assign the appropriate subscription licenses (SL) required for its use of each Product. Unless otherwise specified, each user that accesses Products must be assigned a User SL. Ordering Activity has no right to use Products after the SL term for that Product ends.
   1.2 Fees and Payment Terms. The fees and payment terms applicable to the Products are set forth in the GSA Schedule Pricelists.
   1.3 Product Term Updates. When Ordering Activity purchases a new subscription to Products, the then-current Terms will apply and will not change during Ordering Activity’s subscription for that Product.
   1.4 Modifications. Notwithstanding any terms to the contrary, Ordering Activity acknowledges and agrees that Permuta may modify the features of the Products from time-to-time at Permuta’s sole discretion, so long as they do not result in a degradation of what the Ordering Activity has contracted for.
   1.5 License Reassignment. Except as permitted in this paragraph, Ordering Activity may not reassign a Subscription on a short-term basis (i.e., within 90 days of the last assignment). Ordering Activity may reassign a Subscription on a short-term basis to cover a user’s absence. Reassignment of a Subscription for any other purpose must be permanent. When Ordering Activity reassigns a Subscription from one user to another, Ordering Activity must block access and remove any related software from the former user’s devices.
   1.6 Multiplexing. Hardware or software that Ordering Activity uses to pool connections; reroute information; or reduce the number of devices or users that directly access or use the Products (sometimes referred to as “multiplexing” or “pooling”) does not reduce the number of licenses of any type (including Subscriptions) that Ordering Activity needs.
   1.7 Permuta-Provided Data. Permuta may use or provide Permuta-Provided Data in connection with Ordering Activity’s access to Products. Ordering Activity acknowledges that Permuta-Provided Data has commercial value. All rights in Permuta-Provided Data shall be owned by Permuta unless explicitly stated otherwise in written form by an authorized Permuta representative. All rights not expressly granted to Ordering Activity, are reserved to Permuta.
   1.8 Commercial Items. The Products are a “commercial items,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such items are used in 48 C.F.R. 12.212. Ordering Activity acquires the Products with only the rights set forth in these Terms. Ordering Activity acknowledges and agrees that Permuta sells the Products as commercial items only and will engage as a subcontractor for the Products subject only to the required U.S. Government flowdown clauses listed at 48 CFR 52.244-6, “Subcontracts for Commercial Items”, plus other terms necessary in meeting performance obligations under the specific Government Contract under which Ordering Activity purchases the Products.

   2.1 Eligibility. Only the U.S. DoD may purchase subscriptions for Defense Ready Hosted Services (“Hosted Services”).
   2.2 Security Policy. Permuta will use commercially reasonable efforts to operate Hosted Service as required by Ordering Activities seeking to secure and maintain an Authority to Operate from a DoD Authorizing Official in accordance with DODI 8510.01, Risk Management Framework for DoD Information Technology (IT) (RMF Policy). Permuta will employ the common NIST SP 800-53 Security Controls as required of an external IT service used by Ordering Activity to process, store, and transmit information types with a maximum Security Categorization of {(confidentiality, moderate), (integrity, moderate), (availability, moderate)} in accordance with FIPS Publication 199, Standards for Security Categorization of Federal Information and Information Systems. On a confidential need-to-know basis, Permuta will make the Hosted Service System Security Plan available to Ordering Activities, along with other information reasonably requested by Ordering Activities regarding Permuta’s security practices and policies (collectively, the “Security Policy”); provided, however, that Permuta may redact information from the Security Policy if such information would compromise the security of Permuta’s information technology environment or the confidentiality of any third-party’s confidential information. Ordering Activity is solely responsible for reviewing the Security Policy, making an independent determination as to whether the Security Policy meets Ordering Activity’s requirements, and for ensuring that Ordering Activity’s personnel and consultants follow the guidelines they are provided regarding data security.
   2.3 Location of Data Processing. Except as described elsewhere in these Terms, Ordering Activity Data that Permuta processes on Ordering Activity’s behalf will be transferred to, and stored in and processed in facilities located only in United States, duly authorized by a qualified U.S. Government entity, and maintained by Permuta or its affiliates or subcontractors. Ordering Activity appoints Permuta to perform any such transfer of Ordering Activity Data to any such facility and to store and process Ordering Activity Data in order to provide the Hosted Service.
   2.4 Data Retention. Permuta will retain Ordering Activity Data stored on the Hosted Service in a limited function account for ninety (90) days (the “Wind Down Period”) after expiration or termination of the applicable Subscription. Ordering Activity is responsible for extracting all of its Ordering Activity Data during the Wind...
Down Period. After the Wind Down Period, Permuta will disable Ordering Activity’s account and delete all Ordering Activity Data without further notice to Ordering Activity. Permuta has no liability for the deletion of Ordering Activity Data in accordance with this Section 2.4.

3. DefenseReady / FederalReady Software

3.1 Ordering Activity’s intended use of Products may require certain Software Products to be installed. Ordering Activity must uninstall the Software when Ordering Activity’s right to use it ends.

3.2 The Use Rights in effect when Ordering Activity orders a Subscription for Software Products will apply to Ordering Activity’s use of the version of the Software Product that is current at the time. For future versions and new Software Products, the Use Rights in effect when those versions and Software Products are first released will apply if both parties have agreed to them in writing. Changes Permuta makes to the Use Rights for a particular version will not apply unless Ordering Activity chooses to have those changes apply.

3.3 Subscription licenses are not required for access by bona-fide external users. Bona-fide external users are users that are not an employee, contractor, or agent of the Ordering Activity or its Affiliates; effectively end Ordering Activities (i.e., Ordering Activities of the Ordering Activity) that access instances of the Software.

3.4 External users MAY NOT access instances of Software using the DefenseReady client application and graphical user interface.

4. Ordering Activity Obligations

4.1 End Users. Ordering Activity shall ensure it and its End Users comply with these Terms. Ordering Activity shall be responsible for the actions and omissions of its End Users and any other person or entity to which Ordering Activity allows access to the Products.

4.2 Responsibility for Accounts. Ordering Activity is responsible for maintaining the confidentiality of any Security Credentials (as defined below) associated with Ordering Activity’s account and use of the Hosted Service. Ordering Activity must promptly notify Permuta Ordering Activity support about any possible misuse of Ordering Activity’s accounts or authentication credentials, or any security incident related to the Hosted Service.

4.3 Authority to Operate. Ordering Activity must comply with all laws and regulations applicable to its use of Hosted Service, to include attaining a determination regarding the Trustworthiness of the Hosted Service by a DoD Authorizing Official in accordance with DODI 8510.01, Risk Management Framework for DoD Information Technology (IT) (RMF Policy). Ordering Activity is responsible for implementing and maintaining Security Controls identified in the Security Policy as Ordering Activity’s responsibility. Ordering Activity is responsible for responding to any request from a third party regarding Ordering Activity’s use of Hosted Service.

4.4 Obligations Regarding Ordering Activity Data. Ordering Activity is solely responsible for the content of all Ordering Activity Data. Ordering Activity will secure and maintain all rights in Ordering Activity Data necessary for Permuta to provide the Hosted Service to Ordering Activity without violating the rights of any third party, or any applicable laws or otherwise obligating Permuta to Ordering Activity or to any third party. Permuta does not and will not assume any obligations with respect to Ordering Activity Data or to Ordering Activity’s use of the Hosted Service other than as expressly set forth in these Terms or as required by applicable law. Ordering Activity is solely responsible for determining whether the Hosted Service are appropriate for the storage and processing of the Ordering Activity Data. If Ordering Activity provides (directly or indirectly) Permuta with access to any personal information, Ordering Activity will obtain all required consents from third parties under applicable privacy and data protection laws before providing such personal information to Permuta.

4.5 Acceptable Use Policy and Restrictions.

4.5.1 Neither Ordering Activity, nor those that access Products through Ordering Activity, may use Products:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the Products or impair anyone else’s use of it; or in any application or situation where failure of the Product could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

4.5.2 Except as expressly authorized by these Terms, Ordering Activity may not: (a) modify, disclose, alter, translate or create derivative works of the Products (or any components thereof); (b) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Products (or any components thereof); (c) disassemble, decompile or reverse engineer the Products; (d) use the Products to store or transmit any viruses, software routines or other code designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (e) copy, frame or mirror any part or content of the Products; (f) build a competitive product or service, or copy any features or functions of the Products; (g) interfere with or disrupt the integrity or performance of the Products; (h) attempt to gain unauthorized access to the Products or their related systems or networks; (i) disclose to any third party any performance information, benchmarking or analysis relating to the Products; (j) use the Products in violation of any laws, (k) allow the transfer, transmission, export or re-export of the Products or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (l) remove, alter or obscure any proprietary notices in or on the Products including copyright notices; (m) disclose or make available passwords, user IDs or other credentials and login information (collectively, “Security Credentials”) that Permuta has provided to Ordering Activity or the End Users or that are generated in connection with Ordering Activity’s or End Users’ use of the Product, other than to Ordering Activity or the End Users; (n) work around any technical limitations of the Products or download or otherwise remove copies of software or source code from the Product except as
4.6 Right to Verify Compliance. Ordering Activity must keep records relating to all use and distribution of Products by Ordering Activity and its Affiliates. Subject to applicable Government security requirements, Permuta has the right, at its expense, to verify compliance with these Terms. Ordering Activity must promptly provide all information reasonably requested by the independent auditors retained by Permuta in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Ordering Activity hosts, sublicenses, or distributes to third parties. Ordering Activity agrees to complete Permuta’s self-audit process, which Permuta may request as an alternative to a third-party audit.

4.7 Verification Process. Permuta will notify Ordering Activity at least 30 days in advance of its intent to verify Ordering Activities’ compliance with the license terms for the Products Ordering Activity and its Affiliates use. Permuta will engage an independent auditor, which will be subject to a confidentiality obligation and to applicable Government security requirements. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours in accordance with the applicable Ordering Activity’s security policies and in a manner that does not unreasonably interfere with Ordering Activity’s operations.

4.8 Remedies for Non-compliance. If verification or self-audit reveals any unlicensed use of Products, then Permuta will invoice Ordering Activity for the additional licenses. Notwithstanding the foregoing, nothing in this section prevents the Ordering Activity from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), as applicable. After an audit, Permuta will not subject Ordering Activity to another verification for at least one year. By exercising the rights and procedures described above, Permuta does not waive its rights to enforce these Terms or to protect its intellectual property by any other permissible means.

5. Intellectual Property Rights

5.1 Grants. Subject to these Terms and solely for Ordering Activity’s internal purposes, Permuta grants to Ordering Activity a limited, non-transferable, and non-exclusive right and license, to, and permit its End Users to use the Software Products in the quantities ordered during a valid Subscription Term and (b) use the Hosted Services during a valid Subscription Term. Limits on storage volume, data throughput, page view capacity, consumption and concurrent user volumes may apply.

5.2 License to Ordering Activity Data. To the extent necessary to provide the Hosted Services and support Ordering Activity’s intended use of the Hosted Services, Ordering Activity hereby grants to Permuta the right to (a) collect, process, copy, transmit, display, format and otherwise handle any Ordering Activity Data, and (b) host and store the Ordering Activity Data on Permuta’s servers or Permuta’s agent’s servers.

5.3 Ownership and Reservation of Rights. As between the parties and subject to the express grants set forth in these Terms, (a) Ordering Activity owns all right, title and interest in and to the Ordering Activity Data, and (b) Permuta owns all right, title and interest in and to the Hosted Services (and any and all modifications to or derivative works of the Hosted Services), the Usage Data (as defined below), the Feedback and any and all Intellectual Property Rights embodied in or related to the Products, the Usage Data and/or the Feedback. Permuta reserves all rights not expressly granted to Ordering Activity in these Terms, and except as expressly set forth in these Terms, no licenses are granted by Permuta to Ordering Activity under these Terms, whether by implication, estoppel or otherwise.

6. Reserved.

7. Ordering Activity Support & Customer Support Program

7.1 Support Program Administration

7.1.1 Eligibility. Ordering Activity must have an active Subscription to receive Ordering Activity Support.

7.1.2 Term. The Term of the Customer Support Plan Coincides with the Coverage Period of the associated Software Maintenance.

7.1.3 Customer Support Coordinator. Permuta will designate two contacts to serve as the primary and secondary account managers to manage Permuta’s responsibilities associated with the Customer Support Plan.

7.1.4 Enrollment Administrators. Ordering Activity shall designate two contacts to serve as the primary and secondary enrollment administrators (“Enrollment Administrator”) to manage Ordering Activity’s responsibilities associated with its Support Plan.

7.1.5 Approved Requesters. Ordering Activity shall designate approved requesters (“Approved Requesters”) in accordance with the terms of the selected Support Plan. Approved Requesters are presumed to have the authorization authority to request Support Tasks.

7.1.6 Modifications. Permuta may make commercially reasonable changes to the Ordering Activity Support program from time to time, without amendment to these Terms.

7.2 Support Plans

7.2.1 Included with each Subscription at no additional cost is automatic enrollment in the “Standard” Ordering Activity Support Plan. Ordering Activity may select an alternative Support Plan prior to commencement of the Subscription Term.

7.2.2 The following Support Plans are available:

- **Standard** – The Standard Plan is included with SW Maintenance at no additional cost. This Support Plan may be suitable for organizations with 1) mature deployments of Products or 2) limited support budgets and/or organizations that 3) are not significantly impacted in the event of a service disruption.
Silver – The Silver Plan is designed for organizations that 1) require periodic maintenance of a customer-specific solution minimally extending of one or two out-of-the-box DefenseReady capabilities and/or organizations that 2) are critically impacted in the event of a service Agreement.

Gold - The Gold Plan is designed for for organizations that 1) require periodic maintenance of one or more customer-specific solutions moderately extending one or more of out-of-the-box DefenseReady capabilities; 2) require periodic maintenance of one or more moderately complex customer-specific capability produced by Permuta; 3) require access to cyber security support; and/or organizations that 4) are catastrophically impacted in the event of a service disruption.

Platinum – The Platinum Plan is designed for organizations that 1) require periodic maintenance of one or more customer-specific solutions extensively extending one or more of out-of-the-box DefenseReady capabilities; 2) require periodic maintenance of one or more moderately complex customer-specific capabilities produced by Permuta; 3) require one or more managed projects in order to implement new capabilities or make major enhancements to existing capabilities; 4) require extensive access to cyber security support; and/or organizations that 5) are catastrophically impacted in the event of a service disruption.

OnBoard – The OnBoard Plan is designed for new customers intending to use Products operationally within a 12-month time.

Pilot – The Pilot Plan is designed for potential customers intending to conduct an operational pilot of Products for qualification, evaluation, and/or comparative purposes.

7.2.3 If Permuta provides a Fix in connection with Ordering Activity Support, each Fix is licensed under the same terms as the Product to which it applies.

7.3 Support Task Request Process

7.3.1 Support Tasks. Ordering Activity may only access Ordering Activity Support by requesting a Support Task through Ordering Activity’s Approved Requesters. The Support Task is administered by the Account Manager(s), in cooperation with the Enrollment Administrator(s) and Approved Requesters. At no additional cost, Permuta may provide tools, resources, and software to facilitate the Support Task request process.

7.3.2 Types. The types of Support Tasks available to the Ordering Activity under these Terms are:

- Advisory Support - Advisory support is available for short-term advice and guidance from one of Permuta’s Subject Matter Experts (SME) for problems not covered with problem resolution support as well as requests for consultative assistance for design, development, deployment and operation issues
- Sustainment Support – Sustainment support includes sustainment planning services, off-site integration test environments, update rollout testing, and periodic over the phone support for applying updates and performing major upgrades.
- Problem Resolution Support (PRS) - Problem resolution support is available for assistance with resolving problems with specific symptoms encountered while using the Products, where there is a reasonable expectation that the problem is caused by the Products. Problem Resolution Support is limited to off-site troubleshooting assistance, problem identification, and solution recommendation. If Permuta determines a Product Fix is required to resolve a problem, Permuta will initiate a product fix in accordance with Permuta’s established ProductFix procedures at no cost to the customer.
- Rapid On-Site Support (ROSS) – Rapid onsite support is available to resolve Severity Level A (Critical) and 1 (Catastrophic) problems which cannot otherwise be resolved within 48 hours using other commercially reasonable means. Permuta’s ability to provide rapid onsite support is subject to Permuta’s resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Provided it is in accordance with FTR/JTR, as applicable, and Ordering Activity approves the travel expenses prior to travel, Permuta will redeem Support Credits to account for travel time at a rate of one Support Credit for each required non-business hour of travel not otherwise accounted for in the support.
- Configuration Support – Configuration support is available for Ordering Activities requiring minor configuration changes on a short-term basis.
- Training Support – Training support is available to support curriculum development and to conduct training.
- Cyber Security Support – Subject to availability of Permuta resources, cyber security support may be available to support Ordering Activity’s cyber security needs in relation to its intended use of Products.
- Scheduled On-Site Support – Scheduled on-site Ordering Activity support is available for Ordering Activities subject to Permuta’s resource availability and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta may redeem Support Credits to account for travel time at a rate of one half Support Credit for each required non-business hour of travel not otherwise accounted for in the support day.
- **Solution Development Support** – Solution development support is available for Ordering Activities requiring or engaged in a complex custom solution development effort following commercial best practices.
- **On-Boarding Support** - On-boarding support is available for new implementations and integration services of a new Ordering Activity.

7.4 **Support Credits**

7.4.1 General. As part of the Ordering Activity’s Support Plan, Permuta will issue Support Credits redeemable for Support Tasks. Credits may only be redeemed for 1) Support Tasks following the Support Task request process set forth in section 7.3 or 2) Managed Ordering Activity Support Projects as set forth in section 7.5. Support Credits have no cash value, are non-transferable and non-refundable. All Support Credits are valid for the term of the associated Subscription and expire immediately upon expiration of the Subscription Term or termination of Ordering Activity’s Support Plan.

7.4.2 Roll-Over Support Credits. Permuta will reissue a limited quantity of expired support credits (“Roll-Over Support Credits”) at the start of the associated Subscription’s new term. Section 7.8 identifies the Roll-Over Support Credits limit for each available Support Plan. The reissue quantity will not exceed the limit of the expiring Support Plan or the Follow-On Support Plan associated with a new Subscription, whichever is lowest.

7.4.3 Pre-determined Redemption Quantity. In accordance with appropriate procedures, Permuta will automatically accept and process Support Task requests of a type HAVING a pre-determined redemption quantity as set forth below in Section 7.4.5. Redemption Quantity Approval and Work Orders. A Ordering Activity Enrollment Administrator will be required to issue Permuta a written Authority to Proceed for Support Task Requests of a type NOT HAVING a pre-determined redemption quantity. The Authority to Proceed must specify an approved redemption quantity for each Support Task Request. Generally, preestablished Support Request Work Order process will be followed to accommodate applicable Support Task Requests. The Table below identifies commercially reasonable response time expectations that will serve as the guidelines for both Permuta and the customer throughout the execution of the Support Task Work Order Process.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Limitations</th>
<th>Permuta’s Expected Response</th>
<th>Customer’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity Level 1: Catastrophic business impact</td>
<td>Work orders for Severity Level 1 Support must originate from Severity Level 1 Problem Resolution Support Request. Customers must be eligible for Severity Level 1 support. Work orders for Severity Level 1 Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support. Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority. Authorization may be provided over</td>
<td>❑ Upon determination a Work order is required, Permuta may provide a best-guess level of effort over the phone to which an acceptable approval authority may provide an Authorization to Proceed. Once verbal Authorization to Proceed is provided, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible. If requested, Permuta will endeavor to provide Rapid OnSite Support within 48 hours and no less than 72 hours. Permuta will work continuously to execute other support tasks.</td>
<td>❑ Customer will work continuously to approve work order as soon as possible. Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks. If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support. Customer will work continuously to verify successful execution of support tasks.</td>
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</table>
the telephone or via email without immediately requiring a signature.

### Severity Level A: Critical business impact

Work orders for Severity Level A Support must originate from a Severity Level A Problem Resolution Support Request.

Work orders for Severity Level A Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.

Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority.

Authorization may be provided over the telephone or via email without immediately requiring a signature.

Upon determination a Work Order is required, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible. If electronic approval is not viable, verbal authorization to proceed will be accepted. If requested, Permuta will endeavor to provide Rapid On-Site Support within 72 hours. Permuta will work continuously to execute other support tasks.

Customer will work continuously to approve work order as soon as possible. Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks. If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support. Customer will work continuously to verify successful execution of support tasks.

### Severity Level B: Moderate business impact

Work orders for Severity Level B Support must originate from a Severity Level B Problem Resolution Support Request.

Work orders for Severity Level B Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.

Upon determination a Work Order is required, Permuta will initiate a work order and request verification of the customers objective within 8 business hours.

Upon customer’s verification of the business objective, within 8 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission.

If requested, Permuta will endeavor to provide Rapid On-Site Support within 5 business days. Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.

Customer will verify business objective within 8 business hours upon receiving the request for verification. Customer will provide an authorization decision within 16 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support. Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 16 business hours of being requested.

### Severity Level C: Minimum

Work orders for Severity Level C Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.

Upon determination a Work Order is required, Permuta will initiate a work order and

Customer’s Expected Response

<table>
<thead>
<tr>
<th>Severity Limitations</th>
<th>Permuta’s Expected Response</th>
<th>Customer’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Severity</strong></td>
<td><strong>Limitations</strong></td>
<td><strong>Permuta’s Expected Response</strong></td>
</tr>
<tr>
<td><strong>Severity Level A:</strong> Critical business impact</td>
<td>Work orders for Severity Level A Support must originate from a Severity Level A Problem Resolution Support Request. Work orders for Severity Level A Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support. Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority. Authorization may be provided over the telephone or via email without immediately requiring a signature. Upon determination a Work Order is required, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible. If electronic approval is not viable, verbal authorization to proceed will be accepted. If requested, Permuta will endeavor to provide Rapid On-Site Support within 72 hours. Permuta will work continuously to execute other support tasks. Customer will work continuously to approve work order as soon as possible. Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks. If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support. Customer will work continuously to verify successful execution of support tasks.</td>
<td></td>
</tr>
</tbody>
</table>
business impact or Routine Support


request verification of the customers objective within 16 business hours. Upon customer’s verification of the business objective, within 16 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission. Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.

request for verification. Customer will provide an authorization decision within 24 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to scheduled arrival of On-Site Support. Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 72 business hours of being requested.

7.4.4 Support Credit Redemption Rate. Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

<table>
<thead>
<tr>
<th>Support Task Type</th>
<th>Redemption Rate Unit</th>
<th>Support Credit Redemption Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Sustainment Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Problem Resolution Support</td>
<td>Case/Incident</td>
<td>1</td>
</tr>
<tr>
<td>Rapid On-Site Support</td>
<td>Person Day</td>
<td>During business hours: 10l off hours, weekends &amp; holidaysl 15</td>
</tr>
<tr>
<td>Configuration Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Training Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Cyber Security Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Scheduled On-Site Support</td>
<td>Person Day</td>
<td>During business hours; 6; off hours, weekends, &amp; holidays:10</td>
</tr>
</tbody>
</table>

Under certain circumstances, credit redemption rate will be based on Discipline Rate or other factors. Permuta assumes customer’s environment is configured in accordance with standard guidance or recommended best practices and the customer will make certain information available that is required for the problem resolution process. In the event the customer’s environment does not comply with standard guidance or best practices, information is not made available, or otherwise does not provide commercially reasonable assistance in the problem resolution process, credit redemption rate will be based on the actual effort required to resolve the problem in accordance with Discipline Rates.

Person Day is consists of 1 person up to and not exceeding 6 hours at a customer designated location.

<table>
<thead>
<tr>
<th>Customer Support Discipline</th>
<th>Credit / Labor Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Management</td>
<td>1.3 / Labor Hour</td>
</tr>
<tr>
<td>Training</td>
<td>0.8 / Labor Hour</td>
</tr>
<tr>
<td>Business Process Analysis</td>
<td>0.8 / Labor Hour</td>
</tr>
<tr>
<td>Requirements and Configuration</td>
<td>0.8 / Labor Hour</td>
</tr>
<tr>
<td>Custom Coding</td>
<td>1 / Labor Hour</td>
</tr>
<tr>
<td>Quality and Testing</td>
<td>0.8 / Labor Hour</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>1.2 / Labor Hour</td>
</tr>
<tr>
<td>Integration and Interfaces</td>
<td>1.2 / Labor Hour</td>
</tr>
<tr>
<td>Data Migration</td>
<td>1.2 / Labor Hour</td>
</tr>
<tr>
<td>Cyber Security</td>
<td>1.5 / Labor Hour</td>
</tr>
<tr>
<td>Subject Matter Expert</td>
<td>1.5 / Labor Hour</td>
</tr>
</tbody>
</table>

7.4.1 **Sufficient Credits**. The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required to avoid disrupting or otherwise negatively impacting its intended use of Products. Permuta may refuse to perform Support Tasks if Ordering Activity has insufficient Support Credits.

7.5 **Managed Ordering Activity Support Projects**

7.5.1 **Managed Ordering Activity Support Project**. As part of an eligible Support Plan and when appropriate, Permuta may perform certain support services as Managed Ordering Activity Support Projects (“Projects”). Projects will be used to deliver to Ordering Activity mutually agreed to deliverables (“Deliverables”) to address requirements related to the Ordering Activity’s desired use of the Products.

7.5.2 **Statement of Work**. Permuta will perform Projects in accordance with Permuta’s commercially reasonable standard patterns and practices for processes, documentation, communication, design, configuration, customization, code, test, and operational support. Permuta shall only perform Projects if the parties have executed, and subject to, a mutually agreed to statement of work ("SOW") documenting the specific terms and conditions (including those relating to intellectual property rights) governing such Support Services and Deliverables. Ordering Activity and Permuta agree to each perform its respective obligations in each SOW.

7.5.3 **Support Credit Redemption Plan**. The terms of the Project SOW shall include a Support Credit Redemption Plan specifying a fixed quantity of Support Credits the Ordering Activity would be required to redeem and the redemption scheduled.

7.5.4 **Sufficient Credits**. The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required by the Support Credit Redemption Plan without disrupting or otherwise negatively impacting its intended use of the Products.

7.6 **Response Levels**
When submitting a Support Request, Ordering Activity is responsible for specifying the initial severity level in consultation with Permuta in accordance with the Ordering Activity situation. The Support Request severity level will determine Permuta’s expected response and Ordering Activity’s expected response as identified in the table below.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Situation</th>
<th>Permuta’s Expected Response</th>
<th>Ordering Expected Response</th>
<th>Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Submission via phone only</td>
<td>Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention</td>
<td>1st call response in 1 hour or less. Permuta’s resources at Ordering Activity site as soon as possible. Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of change control authority</td>
<td>Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Permuta’s senior executives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Submission via phone only</td>
<td>Critical business impact: Significant loss or degradation of services Needs attention within 1 hour</td>
<td>1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as required. Continuous effort on a 24x7 basis Notification of Permuta’s senior managers</td>
<td>Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority Management notification</td>
<td></td>
</tr>
<tr>
<td>B. Submission via phone or web</td>
<td>Moderate business impact: Moderate loss or degradation of services but work can reasonably continue in an impaired manner. Needs attention within 2 Business Hours</td>
<td>Initial response in 4 Business Hours or less Effort during Business Hours only</td>
<td>Allocation of appropriate resources to sustain Business Hours continuous effort Access and response from change control authority within 4 Business Hours</td>
<td></td>
</tr>
<tr>
<td>C. Submission via phone or web</td>
<td>Minimum business impact: Substantially functioning with minor or no impediments of services. Needs attention within 4 Business Hours</td>
<td>Initial response in 8 Business Hours or less Effort during Business Hours only</td>
<td>Accurate contact information on case owner Responsive within 24 hours</td>
<td></td>
</tr>
</tbody>
</table>
7.7 **Support Plan Credits**
Permuta will issue Support Credits as they are earned, either monthly or annually. For purchases placed under these Terms, the Support Credits will be earned in accordance with the following table.

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mission Owner 12 Month SL</td>
<td>36</td>
<td>120</td>
<td>240</td>
<td>480</td>
<td>2400</td>
<td>1800</td>
</tr>
<tr>
<td>User Subscriber License/ Basic User CAL</td>
<td>0.03</td>
<td>0.22</td>
<td>0.36</td>
<td>0.52</td>
<td>1.03</td>
<td>5.15</td>
</tr>
<tr>
<td>Member Subscriber License/ Essential</td>
<td>0.012</td>
<td>0.022</td>
<td>0.036</td>
<td>0.052</td>
<td>0.103</td>
<td>0.515</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Prod Instance (12 Months)</td>
<td>36</td>
<td>36</td>
<td>72</td>
<td>108</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Data Integration (12 Months)</td>
<td>12</td>
<td>12</td>
<td>18</td>
<td>24</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Ordering Activity Portal (12 Months)</td>
<td>36</td>
<td>72</td>
<td>144</td>
<td>216</td>
<td>360</td>
<td>240</td>
</tr>
</tbody>
</table>

7.8 **Support Plan Terms, Conditions, and Limitations**

<table>
<thead>
<tr>
<th>Term, Condition, or Limitation</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Subscription Term</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>6 months</td>
</tr>
<tr>
<td>Eligible for Advisory Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Sustainment Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Problem Resolution</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Rapid On-Site Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Eligible for Configuration Support | No | Yes | Yes | Yes | Yes | Yes
---|---|---|---|---|---|---
Eligible for Training Support | No | Yes | Yes | Yes | Yes | Yes
Eligible for Cyber Security Support | No | No | Yes | Yes | Yes | Yes
Eligible for Scheduled On-Site | No | No | No | Yes | Yes | Yes

Applicable Terms, Conditions, and Limitations by Support Plan

| Term, Condition, or Limitation | Standard | Silver | Gold | Platinum | OnBoard | Pilot |
---|---|---|---|---|---|---|
Support | | | | | | |
Eligible for Credit Redemption Plan | No | No | No | Yes | Yes | Yes
Eligible for Solution Development Support | No | No | No | Yes | Yes | Yes
Eligible for On-Boarding Support | No | No | No | No | Yes | Yes
Available Response Level | C | A, B, C | 1, A, B, C | 1, A, B, C | 1, A, B, C | A, B, C
Rollover Support Credits | N/A | 25 | 50 | 100 | 200 | 200
Allowed Number of Approved Requestors (Other than admins) | N/A | 1 | 2 | 4 | 2 | 2

7.9 Additional Support Services Provisions.

7.9.1 Ordering Activity may not, unless specifically authorized by Permuta in writing, i) rent, lease, lend or host any Deliverables (including any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services) or Fixes; ii) reverse engineer, de-compile or disassemble Fixes or Deliverables, except to the extent expressly permitted by applicable law; or iii) transfer licenses to, or sublicense, Fixes or Deliverables to any government entity or quasi-governmental entity or any other third party.

7.9.2 Permuta may request that Microsoft deliver Problem Resolution Support on Permuta’s behalf to Ordering Activity subject to the terms and conditions set forth in these Terms. Permuta will coordinate and participate in the delivery of subcontracted Microsoft services. In order for Permuta to provide subcontracted Microsoft services, Ordering Activity will be required to provide consent to provide the required contact information to Microsoft.

8. Service Level Agreement.

If Permuta does not achieve and maintain the service levels as described in Section 8.4 for the applicable Hosted Services, then Ordering Activity may be eligible for a credit towards its monthly service fees for the applicable Hosted Services (a “Service Credit”). Permuta will not modify the terms of the SLA during a Subscription Term.

8.1 Claims
In order for Permuta to consider a claim that Permuta did not meet the SLA, Ordering Activity must submit the claim to Ordering Activity support at Permuta (in the manner requested by Permuta) including all information necessary for Permuta to validate the claim, including but not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Downtime; (iii) the number and location(s) of affected End Users (if applicable); and (iv) descriptions of Ordering Activity’s attempts to resolve the Incident at the time of occurrence.

Claims must be received by the end of the calendar month following the month in which the Incident occurred. For example, if the Incident occurred on February 15th, Permuta must receive the claim and all required information by March 31st.

Permuta will evaluate the information provided by Ordering Activity in respect of a SLA claim and make a good faith determination of whether a Service Credit is owed. Permuta will use commercially reasonable efforts to process claims during the subsequent month or within forty-five (45) days of receipt, whichever is later. Ordering Activity must be in compliance with the Agreement in order to be eligible for a Service Credit. If Permuta determines that a Service Credit is owed to Ordering Activity, Permuta (or Reseller) will apply the Service Credit to Ordering Activity’s applicable monthly services fees due for the immediately following month after such determination.

8.2 Sole Remedy for Failure to Meet SLA

Service Credits are Ordering Activity’s sole and exclusive remedy for any performance or availability issues for any Hosted Services. Ordering Activity may not set off any fees due under these Terms for any performance or availability issues with the Hosted Services.

Service Credits apply only to fees paid for the particular Hosted Service for which the applicable SLA has not been met. The Service Credits awarded in any billing month for a particular Hosted Service will not, under any circumstance, exceed Ordering Activity’s monthly service fees for that Hosted Service, as applicable, in such billing month.

8.3 Limitations

This SLA and any applicable Service Levels do not apply to any performance or availability issues:

• Due to a Force Majeure Event affecting Permuta (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to our data centers, including at Ordering Activity’s site or between Ordering Activity’s site and the hosting facility);

• That result from the use of services, hardware, or software not provided by Permuta, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services;

• Caused by Ordering Activity’s use of the Hosted Services after Permuta advised Ordering Activity to modify its use of the Hosted Services, if Ordering Activity did not modify its use as advised;

• During or with respect to Previews or to purchases made using Permuta subscription credits;

• That result from Ordering Activity’s unauthorized action or lack of action when required, or from Ordering Activity’s employees, agents, contractors, or vendors, or anyone gaining access to Permuta’s network by means of Ordering Activity Security Credentials or equipment, or otherwise resulting from Ordering Activity’s failure to follow appropriate security practices;

• That result from Ordering Activity’s failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or Ordering Activity use of the Hosted Service in a manner inconsistent with the features and functionality of the Hosted Service (for example, attempts to perform operations that are not supported) or inconsistent with published guidance;

• That result from faulty input, instructions, or arguments (for example, requests to access files that do not exist);

• That result from Ordering Activity’s attempts to perform operations that exceed prescribed quotas or that resulted from Permuta’s throttling of suspected abusive behavior; or

• Due to Ordering Activity’s use of Hosted Service features that are outside of associated Ordering Activity support windows.

8.4 Applicable Hosted Services

The applicable hosted services and the corresponding SLA terms are identified below.

8.4.1 DefenseReady CHS Edition

Downtime: Any period of time when End Users are unable to login to their instance of the Hosted Services.

Monthly Uptime Percentage: The Monthly Uptime Percentage is calculated using the following formula:

\[
\text{Service Minutes} \times \frac{100}{\text{Service Minutes} - \text{Downtime}}
\]

where Downtime is measured in service-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of services impacted by that Incident.

Service Credit:

<table>
<thead>
<tr>
<th>Monthly Uptime Percentage</th>
<th>Service Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.9%</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 99%</td>
<td>10%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Monthly Uptime Percentage</th>
<th>Service Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 95%</td>
<td>50%</td>
</tr>
<tr>
<td>&lt; 85%</td>
<td>75%</td>
</tr>
</tbody>
</table>
8.4.2 DefenseReady for Mission Owner Members, CHS Edition

Downtime: Any period of time when End Users are unable to read or write any service data for which they have appropriate permission but this does not include non-availability of service add-on features.

Monthly Uptime Percentage: The Monthly Uptime Percentage is calculated using the following formula:

\[
\frac{\text{User Minutes} - \text{Downtime}}{\text{User Minutes}} \times 100
\]

where Downtime is measured in user-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of End Users impacted by that Incident.

Service Credit:

<table>
<thead>
<tr>
<th>Monthly Uptime Percentage</th>
<th>Service Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.9%</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 99%</td>
<td>10%</td>
</tr>
<tr>
<td>&lt; 95%</td>
<td>50%</td>
</tr>
<tr>
<td>&lt; 85%</td>
<td>75%</td>
</tr>
<tr>
<td>&lt; 75%</td>
<td>100%</td>
</tr>
</tbody>
</table>

8.4.3 DefenseReady for Mission Owner Users, CHS Edition

Downtime: Any period of time when End Users are unable to read or write any service data for which they have appropriate permission but this does not include non-availability of service add-on features.

Monthly Uptime Percentage: The Monthly Uptime Percentage is calculated using the following formula:

\[
\frac{\text{User Minutes} - \text{Downtime}}{\text{User Minutes}} \times 100
\]

where Downtime is measured in user-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of End Users impacted by that Incident.

Service Credit:

<table>
<thead>
<tr>
<th>Monthly Uptime Percentage</th>
<th>Service Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.9%</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 99%</td>
<td>10%</td>
</tr>
<tr>
<td>&lt; 95%</td>
<td>50%</td>
</tr>
<tr>
<td>&lt; 85%</td>
<td>75%</td>
</tr>
<tr>
<td>&lt; 75%</td>
<td>100%</td>
</tr>
</tbody>
</table>


9.1 General Representations and Warranties. Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under these Terms, (c) the person signing these Terms on its behalf has been duly authorized and empowered to accept these Terms, and (d) these Terms are valid, binding and enforceable against it accordingly.

9.2 Additional Warranties.

9.2.1 For a period of one year from the commencement of the applicable Ordering Activity Subscription Term (the “Warranty Period”) Permuta represents and warrants that it will use commercially reasonable efforts to cause the Hosted Services to conform, in all substantial respects, to the Permuta’s then-current technical documentation for the Hosted Services. If it does not, and Ordering Activity notifies Permuta within the Warranty Period, then Permuta will, at its option, (1) return the price Ordering Activity paid for the non-performing Hosted Services (prorated for any period of usage by Ordering Activity) or (2) repair or replace the Hosted Services. Ordering Activity waives any breach of warranty claims not made during the Warranty Period.

9.2.2 Permuta warrants that all Ordering Activity Support will be performed with professional care and skill. If Permuta fails to do so and Ordering Activity notifies Permuta within 90 days of the date of performance, then Permuta will re-perform the Ordering Activity Support.

9.2.3 The remedies above are Ordering Activity’s sole remedies for breach of the warranties in this Section 9.2. The warranties in these Terms do not apply to problems caused by accident, abuse or use inconsistent with these Terms, including failure to meet minimum system requirements.
9.3 **Disclaimers of Warranty.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9.1 and 9.2, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, HOSTED SERVICES AND ANY THIRD-PARTY SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE HOSTED SERVICES AND SOFTWARE AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA-IS. PERMUTA DOES NOT GUARANTEE THAT THE HOSTED SERVICES OR SOFTWARE WILL BE FREE OF ERRORS.

10. Reserved.

11. Reserved.

12. Effect of Termination.

12.1 **Effect of Termination.** Upon any termination or expiration of the Subscription: (a) all rights and licenses granted to Ordering Activity under these Terms will immediately cease; (b) Ordering Activity will immediately pay to Permupat all amounts due and payable up to the effective date of termination of the Subscription; and (c) notwithstanding any terms to the contrary in these Terms, Sections 1.2, 4, 5, 9.3, 10, 12.1, and 13 will survive any termination or expiration of the Subscription.

12.2 **Data Retention.** Permupat will retain Ordering Activity Data stored on the Hosted Service in a limited function account for ninety (90) days (the “Wind Down Period”) after expiration or termination of the applicable Subscription. Ordering Activity is responsible for extracting all of its Ordering Activity Data during the Wind Down Period. After the Wind Down Period, Permupat will disable Ordering Activity’s account and delete all Ordering Activity Data without further notice to Ordering Activity. Permupat has no liability for the deletion of Ordering Activity Data in accordance with this Section 12.2.


13.1 Reserved.

13.2 **Independent Contractors.** Neither party will, for any purpose, be deemed to be an agent, franchisor, franchisee, employee, representative, owner or partner of the other party, and the relationship between the parties will only be that of independent contractors. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

13.3 **Governing Law and Venue.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Permupat shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer/the Agreement shall be governed under applicable U.S. Federal law.

13.4 **Microsoft Products and Services and Other Third-Party Services.** Ordering Activity acknowledges and agrees that Permupat uses third-party software and services in connection with the Services (“Third-Party Services”), and Permupat may charge Ordering Activity for the Third Party Services as part of Ordering Activity’s bill for the Products. Ordering Activity agrees to abide by the terms and conditions provided by Permupat with respect to the Third-Party Services, including the Microsoft Cloud Agreement attached to this Agreement as Exhibit A and incorporated by reference into this Agreement (the “Microsoft Cloud Agreement”). All Microsoft products (whether software, online services or otherwise) are Third Party Services. Ordering Activity also agrees that the Microsoft Cloud Agreement shall be deemed incorporated by reference into the Government Contract pursuant to which Ordering Activity purchases the Products, regardless if the Microsoft Cloud Agreement is actually attached to the Government Contract.

13.5 Reserved.

13.6 Reserved.

13.7 Reserved.

13.8 Reserved.

13.9 Reserved.

13.10 **Subcontractors.** Permupat may hire subcontractors to provide services (including Support Services) on its behalf. Any such subcontractors will be required to act consistently with these Terms and will only be permitted to obtain Ordering Activity Data to deliver the services Permupat is obligated to provide and will be prohibited from using Ordering Activity Data for any other purpose. Permupat shall remain responsible for the actions of its subcontractors.

14. **Definitions.**

“**Affiliate**” means,

* for Permupat, any legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Permupat; and

* for Ordering Activity, any entity that is an office, agency, department or other subdivision of that Ordering Activity controlled by or under common control with Ordering Activity.

For this definition, “ownership” means owning more than 50% of applicable interests, and “control” means the legal right to bind contractually and exercise decision power over administration, finances, and operations.

“**Authority to Operate (ATO)**” means the official management decision given by a senior organizational official to authorize operation of an information system and to explicitly accept the risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation based on the implementation of an agreed-upon set of security controls.

“**Business Hours**” means 9:00 AM to 5:30 PM Eastern Standard Time, excluding Federal holidays and weekends.

“**Change of Control**” means any of the following: (a) any transaction or series of transactions resulting in the change in beneficial ownership of the voting securities representing at least fifty percent (50%) of the total voting power of a party, excluding any initial public offering of its common stock, (b) a merger of a party with or into another party, whether or not the party is the
surviving entity, or (c) the sale or other transfer of more than fifty percent (50%) of a party's assets whether in a single transaction or series of transactions.

*Ordering Activity Data* means all data, including all text, sound, video, or image files, and software, that are provided to Permuta by, or on behalf of, Ordering Activity through use of the Products.

*Ordering Activity Support* means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity with respect to the Products under these Terms.

*Downtime* is defined for each Product in Section 8. Downtime does not include Downtime scheduled by Permuta in advance. Downtime does not include unavailability of a Product due to limitations described in Section 8.3.

*End User* means any person ordering Activity permits to access Ordering Activity Data hosted in the Products or otherwise uses the Products. Employees of Affiliates of Ordering Activity may be End Users.

*Feedback* means any suggestions, comments or other feedback provided by Ordering Activity to Permuta or Reseller with respect to Permuta or the Products.


*Fixes* are fixes, modifications or enhancements, or their derivatives for the Products, that Permuta either releases generally (such as service packs) or that Permuta provides to Ordering Activity to address a specific issue.

*Government Contract* means the binding agreement between Ordering Activity and Reseller under which Ordering Activity orders Products from Reseller and Reseller binds Ordering Activity to these Terms.

*Hosted Services* means the hosted services provided by Permuta, directly or indirectly, to Ordering Activity.

*Incident* in the context of the SLA, means (i) any single event, or (ii) any set of events, that result in Downtime.

*Intellectual Property Rights* means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

*Microsoft* means Microsoft Corporation.

*Permuta-Provided Data* means any data provided by Permuta to Ordering Activity under these Terms, including Sample Data. Permuta-Provided Data excludes Ordering Activity Data.

*Previews* means preview, trial, beta, or other pre-release version or feature of the Products offered by Permuta to obtain Ordering Activity feedback.

*Receiving Party* means the party that receives Confidential Information from the Disclosing Party. *Reseller* means any reseller authorized by Permuta to resell the Products to Ordering Activity.

*Roll-Over Support Credits* means a limited quantity of expired support credits reissued in a Followon Support Plan in accordance with section 7.4.2.

*Sample Data* means data in, originating from, or derived from an information system consumable form that mimics or is representative of real-world operational data which may be used for testing, demonstrations or other purposes and that is made available to Ordering Activity under these Terms.

*Security Categorization* means the characterization of information or an information system based on an assessment of the potential impact that a loss of confidentiality, integrity, or availability of such information or information system would have on organizational operations, organizational assets, individuals, other organizations, and the Nation.

*Security Control* means a safeguard or countermeasure prescribed for an information system or an organization designed to protect the confidentiality, integrity, and availability of its information and to meet a set of defined security requirements.

*Security Policy* means the collective policies and procedures of Hosted Service followed by Permuta to establish and maintain the Hosted Service's Trustworthiness as required by Ordering Activity.

*SLA* means Service Level Agreement, which specifies the minimum service level of the Hosted Services.

*Software* means any software provided by Permuta, directly or indirectly, to Ordering Activity. Software does not include Hosted Services but Hosted Services may include Software.

*Subscription* means an enrollment by Ordering Activity for Products for a defined Subscription Term.

*Subscription Term* means the length of time that Ordering Activity has rights to access the Products. Subscriptions shall be twelve (12) months from the date of Ordering Activity's purchase of the Products as stated in the applicable purchase order.

*Support Credits* are allotments for Ordering Activity Support that are earned either monthly or annually with an Ordering Activity Support Plan.

*Support Credit Redemption Plan* means a detailed plan for redeeming no less than 500 Support Credits in support of a specific Ordering Activity initiative or set of requirements related to the Ordering Activity’s desired use of Products.

*Support Plan* means one of the support plans listed in Section 7.2 in which Ordering Activity enrolls during a Subscription Term.

*Support Task* means a specific instance of Ordering Activity’s access to Permuta expertise or technical support in connection with a Ordering Activity Support Plan.

*System Security Plan* means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.

*Trustworthiness* means the degree to which Hosted Service, against a full range of threats, can be expected to preserve the confidentiality, integrity, and availability of the Ordering Activity information it processes, stores or transmits.

*Use Rights* means the rights of members, users, mission owners, and other End Users to use the Software as described by Permuta herein.
This Microsoft Cloud Agreement is incorporated into the Government Contract entered into between the Ordering Activity who is a Government entity ("Ordering Activity") and the person or entity who has entered into a prime contract with the Government ("Contractor") as an addendum and governs Ordering Activity’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the "agreement"). It is effective on the date that the Contractor provisions the Ordering Activity’s Subscription. Key terms are defined in Section 1 of the agreement. All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Ordering Activity nor any of its Affiliates is in material breach of this agreement.

a. Software. Upon acceptance of each order, Microsoft grants Ordering Activity a limited right to use the Software in the quantities ordered.

(i) Use Rights. The Use Rights in effect when Ordering Activity orders a Subscription License for Software will apply to Ordering Activity’s use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply if agreed to by all parties in writing. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Ordering Activity chooses to have those changes apply. (ii) Temporary licenses. Licenses available on a subscription basis are temporary.

b. Online Services. Ordering Activity may use the Online Services as provided in this agreement.

(i) Online Services Terms. The Online Services Terms in effect when Ordering Activity orders a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on Consumption Offerings, as described in Section 2.a, below, the Online Services Terms current at the start of each billing period will apply to usage during that period if agreed to by all parties in writing.

(ii) Reserved.

(iii) End Users. Ordering Activity controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Ordering Activity will ensure End Users comply with the Acceptable Use Policy.

(iv) Ordering Activity Data. Ordering Activity is solely responsible for the content of all Ordering Activity Data. Ordering Activity will secure and maintain all rights in Ordering Activity Data necessary for Microsoft to provide the Online Services to Ordering Activity without violating the rights of any third party or otherwise obligating Microsoft to Ordering Activity or to any third party. Microsoft does not and will not assume any obligations with respect to Ordering Activity Data or to Ordering Activity’s use of the Product other than as expressly set forth in this agreement or as required by applicable law.

(v) Responsibility for Ordering Activity’s accounts. Ordering Activity is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Ordering Activity’s use of the Products. Ordering Activity must promptly notify Ordering Activity support about any possible misuse of Ordering Activity’s accounts or authentication credentials, or any security incident related to the Products.

c. Reservation of rights. Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to accessor use Software on a device do not give Ordering Activity any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

d. Restrictions. Ordering Activity may use the Product only in accordance with this agreement. Ordering Activity may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft’s intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Ordering Activity may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Ordering Activity’s use of the Products. Except as expressly permitted in this agreement or Product documentation, Ordering Activity may not distribute, sublicense, rent, lease, lend, resell or transfer Products, in whole or in part, or use them to offer hosting services to a third party.

e. Preview releases. Microsoft may make Previews available. Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLA and all limited warranties provided in this agreement. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Use Rights and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into “General Availability.”

f. Verifying compliance for Products.

(i) Right to verify compliance. Ordering Activity must keep records relating to all use and distribution of Products by Ordering Activity and its Affiliates. Subject to applicable Government security requirements, Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Ordering Activity must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Ordering Activity hosts, sublicenses, or distributes to third parties. Ordering Activity agrees to complete Microsoft’s selfaudit process, which Microsoft may request as an alternative to a third-party audit.

(ii) Remedies for non-compliance. If verification or self-audit reveals any unlicensed use of Products, then within 30 days Microsoft will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit. Notwithstanding the foregoing, nothing in this section prevents the Ordering Activity from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. Microsoft will not subject Ordering Activity to another verification for at least one
year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

(iii) Verification process. Microsoft will notify Ordering Activity at least 30 days in advance of its intent to verify Ordering Activity’s compliance with the license terms for the Products Ordering Activity and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Ordering Activity’s operations.

Subscriptions, ordering.

a. Available Subscription offers. The Subscription offers available to Ordering Activity will be established by the Government Contract and generally can be categorized as one or a combination of the following:

(i) Online Services Commitment Offering. Ordering Activity commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service. Online Services Commitment Offerings are also referred to as “License Plans” in the Product Terms.

(ii) Consumption Offering (also called Pay-As-Ordering Activity-Go). Ordering Activity pays based on actual usage with no upfront commitment. Consumption Offerings are billed according to Consumption Rates, as defined in the Product Terms.

(iii) Limited Offering. Ordering Activity receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

(iv) Software Commitment Offering. Ordering Activity commits in advance to purchase a subscription for a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

b. Ordering.

(i) Orders. Orders must be placed through the Contractor. Ordering Activity may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but Affiliates may not place orders under this agreement. Ordering Activity also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Ordering Activity’s internal business. If Ordering Activity grants any rights to Affiliates or third parties with respect to Software or Ordering Activity’s Subscription, such Affiliates or third parties will be bound by this agreement and Ordering Activity agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

(ii) The Contractor may permit Ordering Activity to modify the quantity of Products ordered during the Term of a Subscription. Additional quantities of Products added to a Subscription will expire at the end of that Subscription.

c. Pricing and payment. Prices for each Product and any terms and conditions for invoicing and payment will be established by the Contractor in accordance with the GSA Pricelist. d. Renewal.

(i) Reserved. (ii) Reserved.

e. Eligibility. Ordering Activity’s must qualify as Federal Agencies or State/Local Governments. Microsoft reserves the right to verify eligibility at any time and suspend the Product if the eligibility requirements are not met.

f. Taxes. The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay, and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax. Microsoft will state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3 Term, termination.

a. Agreement term and termination. This agreement will remain in effect until the expiration or termination of the Government Contract, whichever is earliest.

b. Cancel a Subscription. The Government Contract will establish the terms and conditions, if any, upon which Ordering Activity may cancel a Subscription.

Security, privacy, and data protection.

a. Reseller Administrator Access and Ordering Activity Data. Ordering Activity acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Ordering Activity Data, however, Ordering Activity may request additional administrator privileges from its Contractor; (ii) Ordering Activity can, at its sole discretion and at any time during the Term, terminate its Contractor’s administrative privileges; (iii) the Contractor’s privacy practices with respect to Ordering Activity Data or any services provided by the Contractor are subject to the terms of the Government Contract and may differ from Microsoft’s privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Ordering Activity Data, including personal data. Ordering Activity consents to Microsoft providing the Contractor with Ordering Activity Data and information that Ordering Activity provides to Microsoft for purposes of ordering, provisioning, and administering the Online Services.

b. Ordering Activity consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Ordering Activity may choose to provide personal information to Microsoft on behalf of third parties (including Ordering Activity’s contacts, resellers, distributors, administrators, and employees) as part of this agreement. Ordering Activity will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
c. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor.

d. As and to the extent required by law, Ordering Activity shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Ordering Activity shall obtain the users’ consent to the same.

Warranties.

a. Limited warranty.

   (i) Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Ordering Activity is first licensed for that version. If it does not, and Ordering Activity notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Ordering Activity paid for the Software license or (2) repair or replace the Software.

   (ii) Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Ordering Activity’s use. Ordering Activity’s remedies for breach of this warranty are in the SLA.

   The remedies above are Ordering Activity’s sole remedies for breach of the warranties in this section.

b. Exclusions. The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offers, or to components of Products that Ordering Activity is permitted to redistribute.

c. Disclaimer. Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, noninfringement, merchantability and fitness for a particular purpose. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Defense of third party claims.

a. By Microsoft. Microsoft will defend Ordering Activity against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Ordering Activity’s license and refund any prepaid subscription license fees for Products for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Ordering Activity’s continuation of use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

b. Ordering Activity’s agreement. Ordering Activity agrees that use of Ordering Activity Data or non-Microsoft software Microsoft provides or otherwise makes available on Ordering Activity’s behalf will not infringe any third party’s patent, copyright or trademark or make unlawful use of any third party’s trade secret. In addition, Ordering Activity will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

c. Rights and remedies in case of possible infringement or misappropriation. If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Ordering Activity’s use of the Product or Fix, Microsoft will seek to obtain the right for Ordering Activity to keep using it or modify or replace it with a functional equivalent, in which case Ordering Activity must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Ordering Activity’s right to the Product or Fix and refund any amounts Ordering Activity has paid for those rights to Fixes and, for Products, any amount paid for a usage period after the termination date.

d. Other terms. Ordering Activity must notify Microsoft promptly in writing of a claim subject to this section. To the extent permitted by applicable law, give Microsoft sole control over the defense and settlement (provided that for any Federal Agency Ordering Activity’s, the control of the defense and settlement is subject to 28 U.S.C. 516) and provide reasonable assistance in defending the claim. Microsoft will reimburse Ordering Activity for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Ordering Activity’s, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

Limitation of liability.

For each Product, each party’s maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the contract price.

For Ordering Activity’s that are Federal Agencies, this Section shall not impair the Ordering Activity’s right to recover for personal injury or death resulting from Licensor’s negligence, or fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

Support.

The Contractor will provide details on support services available for Products purchased under this agreement.

Miscellaneous.

a. Notices. Ordering Activity must send notices by mail, return receipt requested, to the address below.
Notices should be sent to:  
Microsoft Corporation  
Volume Licensing Group  
One Microsoft Way  
Redmond, WA 98052  
USA  
Via Facsimile: (425) 936-7329

Copies should be sent to:  
Microsoft Corporation  
Legal and Corporate Affairs  
Volume Licensing Group  
One Microsoft Way  
Redmond, WA 98052  
USA  
Via Facsimile: (425) 936-7329

Ordering Activity agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for Ordering Activity’s Subscription. Notices are effective on the date on the return receipt or, for email, when sent. Ordering Activity are responsible for ensuring that the email address for the account administrator(s) named for Ordering Activity’s Subscription is accurate and current.

b. Assignment. Any proposed assignment must be approved by the other party in writing in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Any prohibited assignment is void.

c. Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

d. Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.

e. No agency. This agreement does not create an agency, partnership, or joint venture.

f. No third-party beneficiaries. There are no third-party beneficiaries to this agreement.

g. Use of contractors. Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

h. Microsoft as an independent contractor. The parties are independent contractors. Ordering Activity and Microsoft each may develop products independently without using the other’s confidential information.

i. Agreement not exclusive. Ordering Activity is free to enter into agreements to license, use or promote non-Microsoft products or services.

j. Entire agreement. This agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) The GSA Purchase Order, (2) this agreement, (3) the Product Terms, (4) the Use Rights, and (5) any other documents in this agreement.

k. Survival. All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.

l. U.S. export jurisdiction. Products are subject to U.S. export jurisdiction. Ordering Activity must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

m. Force majeure. Excusable delays shall be governed by FAR 52.212-4(f).

n. Contracting authority. If Ordering Activity are an individual accepting these terms on behalf of an entity, Ordering Activity represent that Ordering Activity have the legal authority to enter into this agreement on that entity’s behalf.

o. Applicable Law.

• When the Ordering Activity is a State/Local Entity. The terms of this Agreement will be governed by and construed in accordance with the Federal laws of the United States.

• Where the Ordering Activity is a Federal Agency, all disputes under this Agreement shall be governed by FAR 52.233-1. Disputes and the Agreement shall be governed under applicable US Federal law.

p. Additional Terms Applicable when the Ordering Activity

• No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or authorized officer of Ordering Activity purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-
through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements shall be executed in writing.

- If any document incorporated by reference into this agreement, including the Use Rights included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of Ordering Activity’s license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than the applicable law set forth above in Section 9.o; and/or (4) otherwise violates applicable law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Use Rights included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

**Definitions.**

Any reference in this agreement to “day” will be a calendar day.

“Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means,

a. for Microsoft, any legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Microsoft;

b. for Contractor, any entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Contractor; and

c. for each Ordering Activity identified on an Initial Order Form, any entity that
   (i) is a bureau, office, agency, department or other subdivision of that Ordering Activity (and located in Ordering Activity’s State, if Ordering Activity is a State/Local Entity) controlled by or under common control with Ordering Activity for whose use of Products Contractor is contractually responsible under its Government Contract in accordance with these Microsoft Cloud Agreement terms and conditions, and (ii) controls, is controlled by, or is under common control with, Ordering Activity.

For this definition, “ownership” means owning more than 50% of applicable interests, and “control” means the legal right to bind contractually and exercise decision power over administration, finances, and operations.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Ordering Activity using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Ordering Activity with Ordering Activity Data that is subject to Government regulations for which the Ordering Activity determines a Government Community Cloud Services appropriate to meet the Ordering Activity’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.

“Ordering Activity Data” is defined in the Online Services Terms.

“End User” means any person Ordering Activity permit to access Ordering Activity Data hosted in the Online Services or otherwise use the Online Services.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Ordering Activity to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Public Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Government Contract” means the binding agreement between the Contractor and Ordering Activity under which Ordering Activity orders Products from the Contractor and the Contractor binds Ordering Activity to the terms of the this agreement.

“Licensing Site” means http://www.microsoft.com/licensing/contracts or a successor site.

“Instance” means an image of software that is created by executing the software’s setup or install procedure or by duplicating such an image.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at https://www.microsoft.com/en-us/TrustCenter/Compliance/ or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Non-Microsoft Product” is defined in the Online Services Terms.

“Online Services” means any of the Microsoft-hosted online services identified as such in the Product Terms and/or Online Services Terms and subscribed to by Ordering Activity under this agreement, including but not limited to those which are Government Community Cloud Services: Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, Microsoft Power BI Services, or Microsoft Intune Online Services. For clarity:

- Microsoft’s subcontract with Contractor may limit the scope and variety of Microsoft Online Services available to Ordering Activity, for example based upon either a Microsoft License Program restriction and/or Ordering Activity’s unique regulatory or other requirement.

- Ordering Activity should not issue a purchase order to Contractor for an Online Service unless Ordering Activity is first satisfied, pursuant to Microsoft’s public statements on the Microsoft Trust Center Compliance Page, that its regulatory and other requirements will be met.

- In certain cases, Microsoft may require Contractor to provide Ordering Activity with an amendment to this Ordering Activity Agreement, in cases where an Online Service’s compliance with a regulation is predicated upon joint Ordering Activity responsibility, as set for in the Microsoft Trust Center Compliance Page.

“Online Services Terms” means the additional terms that apply to Ordering Activity’s use of Online Services provided herein.
“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain Ordering Activity feedback.

“Product” means all products sold to Ordering Activity by Contractor, as identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews. For clarity, not all Products shown in the Product Terms will be available to Ordering Activity under this Agreement. Contractor will inform Ordering Activity of Products made available under the Government Contract.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached herein.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Ordering Activity’s state and located within Ordering Activity’s state’ jurisdiction and geographic boundaries.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

“Subscription” means an enrollment for Online Services for a defined Term as established by Ordering Activity’s Reseller.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Tribal Entity” means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product.

The Use Rights for Online Services are published in the Online Services Terms. In addition, the Product Terms (a) contain product-specific references which may apply to certain Online Services and (b) may reference Online Services, and certain types of SKUs for them, that are not made available to Ordering Activity.

The Use Rights for Software are published by Microsoft in the Product Terms.

EXHIBIT B TERMS FOR DEFENSEREADY ON-PREMISE EDITION

DefenseReady On-Premise Edition is a Unified Solution with Microsoft Dynamics CRM software. Microsoft Corporation or one of its affiliates (collectively, “Microsoft”) has licensed the Microsoft Dynamics CRM software to Permuta Technologies, Inc. (“Permuta”). The terms of the Agreement apply only to DefenseReady On-Premise Editions licensed perpetually and includes the media on which Ordering Activity received it, if any. The terms also apply to any DefenseReady or Microsoft

• updates,

• supplements, and

• Internet-based services

for Software covered under this Exhibit B, unless other terms accompany those items. If so, those terms apply.

1. OVERVIEW.

a. Software. The Software includes:

• Server software.

• Additional software that may only be used with the server software directly, or indirectly through other additional software.

b. License Model. The Software is licensed based on

• The number of operating system environments that Ordering Activity run; and

• the number of instances of server software that Ordering Activity run; and

• the number of users that access instances of server software.

c. License Terms for Use with Virtual Server and other Similar Technologies.

• Instance. Ordering Activity create an “instance” of Software by executing the Software’s setup or install procedure. Ordering Activity also create an instance of Software by duplicating an existing instance. References to Software in this agreement include “instances” of the Software.

• Run an Instance. Ordering Activity “run an instance” of Software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

• Operating System Environment. An “operating system environment” is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer
name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system instance or parts identified above.

There are two types of operating system environments, physical and virtual. A physical operating system environment is configured to run directly on a physical hardware system. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system. A physical hardware system can have either or both of the following:

- one physical operating system environment
- one or more virtual operating system environments

**Server.** A server is a physical hardware system capable of running server Software. A hardware partition or blade is considered to be a separate physical hardware system. For the purposes of these terms, a server may be owned and managed by Ordering Activity (“Ordering Activity’s server”), or be fully physically dedicated to Ordering Activity under the day to day management and control of a third party entity (e.g. Outsourcing Company).

- Assigning a License. To assign a license means simply to designate that license to one server or user.

2. **USE RIGHTS.**

   a. Assigning the License to the Server.

   i. Before Ordering Activity run any instance of the server software under a Software license, Ordering Activity must assign that license to one of Ordering Activity’s servers. That server is the licensed server for that particular license. Ordering Activity may assign other Software licenses to the same server, but Ordering Activity may not assign the same license to more than one server.

   ii. Ordering Activity may reassign a Software license, but not within 90 days of the last assignment. Ordering Activity may reassign a Software license sooner if Ordering Activity retire the licensed server due to permanent hardware failure or replacement. If Ordering Activity reassign a license, the server to which Ordering Activity reassign the license becomes the new licensed server for that license.

   b. Running Instances of the Server Software. Ordering Activity may run, at any one time, one instance of the server software in one physical or virtual operating system environment on the licensed server.

   c. Running Instances of the Supplemental Server Software. Ordering Activity may run or otherwise use any number of instances of the Supplemental Server Software listed below in physical or virtual operating system environments on any number of devices. Ordering Activity may use those instances only with the server software. Use of any instance with the server software may be indirect, through other instances of the Supplemental Server Software, or direct.

   * DefenseReady Data Services Server
   * DefenseReady Recon Server
   * DefenseReady WebDav Server
   * DefenseReady Learning Management System (LMS) SCORM Engine and Player
   * DefenseReady External User Self-Service Portal Server
   * Microsoft Dynamics CRM 2016 for Microsoft Office Outlook
   * Microsoft E-Mail Router and Rule Deployment Wizard for Microsoft Dynamics CRM 2016
   * Microsoft Dynamics CRM Reporting Extensions for Microsoft Dynamics CRM 2016 Microsoft SharePoint Grid for Microsoft Dynamics CRM 2016
   * Microsoft Dynamics CRM 2016 Report Authoring Extensions
   * Microsoft Dynamics CRM 2016 Best Practices Analyzer
   * Microsoft Dynamics CRM 2016 Multilingual User Interface (MUI)
   * MarketingPilot Connector for Microsoft Dynamics CRM
   * Microsoft Dynamics CTM Sales Workspace
   * Microsoft Dynamics CRM for supported devices

   d. Creating and Storing Instances on Ordering Activity’s Servers or Storage Media. Ordering Activity have the additional rights below for each Software license Ordering Activity acquire.
• Ordering Activity may create any number of instances of the server software and Supplemental Server Software.

• Ordering Activity may store instances of the server software and Supplemental Server Software on any of Ordering Activity’s servers or storage media.

• Ordering Activity may create and store instances of the server software and Supplemental Server Software solely to exercise Ordering Activity’s right to run instances of the server software under any of Ordering Activity’s Software licenses as described (e.g., Ordering Activity may not distribute instances to third parties).

3. ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.

a. Operating System Environment License
i. Ordering Activity must acquire and assign an Operating System Environment License (OSEL) to each Operating System Environment hosting one or more instances of the server software.

b. Client Access Licenses (CALs).
   i. Ordering Activity must acquire and assign the appropriate CAL to each device or user that accesses Ordering Activity's instances of the server software directly or indirectly. A hardware partition or blade is considered to be a separate device.
      • Ordering Activity do not need CALs for any of Ordering Activity's servers licensed to run instances of the server software.
      • Ordering Activity do not need CALs for up to two devices or users to access Ordering Activity’s instances of the server software only to administer those instances.
      • Ordering Activity’s CALs permit access to Ordering Activity’s instances of earlier versions, but not later versions, of the server software.

ii. Categories of User CALs. There are three categories of CALS: the Essential CAL, Basic Use Additive CAL and the Professional Use Additive CAL. Ordering Activity may not have a Professional Use Additive CAL without an underlying Basic Use Additive CAL, and a Basic Use Additive CAL without an underlying Essential CAL.
      • The DefenseReady Essential CAL, with the Microsoft Dynamics CRM Essential CAL, allows users only Essential use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.
      • The DefenseReady Basic Use Additive CAL, with the Microsoft Dynamics CRM Basic Use Additive CAL, allows users only Basic use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.
      • The DefenseReady Professional Use Additive CAL, with the Microsoft Dynamics CRM Professional Use Additive CAL, allows users Professional use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.

   Each CAL permits one user, using any device, to access instances of the software on Ordering Activity’s licensed servers in Ordering Activity’s licensed DefenseReady operating system environment.

iii. Reassignment of CALs. Ordering Activity may
      • permanently reassign Ordering Activity’s user CAL from one user to another;
      • or temporarily reassign Ordering Activity's user CAL to a temporary worker while the user is absent.
      c. Multiplexing. Hardware or software Ordering Activity use to
      • Pool connections,
      • Reroute information, or
      • Reduce the number of devices or users that directly access or use the software (sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of licenses of any type that Ordering Activity need.

   d. No Separation of Server Software. Ordering Activity may not separate the server software for use in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.

   e. Additional Functionality. Permuta or Microsoft may provide additional functionality for the Software. Other license terms and fees may apply if all parties agree to them in writing prior to additional terms and fees becoming effective.

   4. NET FRAMEWORK SOFTWARE. The software contains Microsoft .NET Framework software. This software is part of Microsoft Windows. The license terms for Microsoft Windows apply to Ordering Activity’s use of the .NET Framework software.
   5. BENCHMARK TESTING. Ordering Activity must obtain Permuta’s and Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of the software. However, this does not apply to the Microsoft .Net Framework (see below).
   6. MICROSOFT .NET BENCHMARK TESTING. The software includes one or more components of the .NET Framework 3.0 (“.NET Components”). Ordering Activity may conduct internal benchmark testing of those components. Ordering Activity may disclose the results of any benchmark test of those components. Notwithstanding any other agreement Ordering Activity may have with Microsoft, if Ordering Activity disclose such benchmark test results, Microsoft shall have the right to disclose the results of benchmark tests it conducts of Ordering Activity’s products that compete with the applicable .NET Component.

   7. SCOPE OF LICENSE. Subject to Ordering Activity’s continuing obligation for compliance with the terms set forth herein, the underlying GSA Schedule Contract, Schedule Pricelist and applicable purchase order, Permuta hereby grants to Ordering Activity a limited, nonexclusive, non-transferable, non-assignable license to use the Software during the term of Ordering Activity’s license only as expressly authorized in this Terms. By using the Software, Ordering Activity acknowledge and agree that the Software is licensed, not sold, that all Software and accompanying documentation are proprietary to Permuta and/or Microsoft and are protected under copyright and other intellectual property laws and international treaties Ordering Activity further acknowledge and agree that, as between Ordering Activity and Permuta, Permuta owns and its third party licensors own and shall continue to own all right, title and interest to the Software and accompanying Documentation, including any associated intellectual property rights. Except for the limited license granted herein, these Terms do not grant Ordering Activity any ownership or other right or interest in the Software, whether by estoppel, implication or otherwise. Ordering Activity must comply with any technical limitations in the Software that only allow Ordering Activity to use it in certain ways. Ordering Activity may not
      • work around any technical limitations in the Software;
• reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits, despite this limitation;

• make more copies of the Software than specified in this agreement or allowed by applicable law, despite this limitation;

• publish the Software for others to copy;

• rent, lease or lend the software; or

• use the Software for commercial software hosting services.

Rights to access the Software on any device do not give Ordering Activity any right to implement Permuta patents or other Permuta intellectual property in Software or devices that access that device.

8. SOFTWARE MAINTENANCE. Ordering Activity may receive upgrades to future Software versions by acquiring Maintenance for a fee in accordance with the GSA Pricelist. Please note, however, that the right to upgrade is limited to new versions of the Software during the Maintenance coverage period. Licenses must be enrolled in Maintenance when the license is originally acquired, and coverage must be renewed annually during the agreement’s term without lapse or the right to upgrade is voided. Users who are not enrolled in Maintenance who want to upgrade must purchase a new license. Maintenance shall be provided only to unmodified Software and commercially released updated versions of the Software. Ordering Activity are solely responsible for making or arranging for updates to interfaces for custom applications which Ordering Activity have installed or created. Software Maintenance allows a Ordering Activity access to product updates, including bug fixes, new quarterly releases with additional capabilities, as well as major product and version updates for DefenseReady and Embedded Microsoft Dynamics CRM. Additional instances may be allowed if Maintenance is purchased. Additional software modules may also be made available to Ordering Activity through Ordering Activity’s purchase of Maintenance. Any such additional software shall also be subject to these Terms. Maintenance will be provided be Permuta provided that Ordering Activity’s environment and infrastructure is configured according to and in compliance with the guidance provided by Permuta.

9. Ordering Activity Support and Support Plans. Terms for Ordering Activity Support and Support Plans for software covered by this Exhibit B are identified in Exhibit C.

10. BACKUP COPY. Ordering Activity may make one backup copy of the Software media. Ordering Activity may use it only to create instances of the Software.

11. DOCUMENTATION AND USAGE. Any person that has valid access to Ordering Activity’s computer or internal network may copy and use the documentation for Ordering Activity’s internal, reference purposes. By using the Software, Ordering Activity acknowledge and agree that Permuta may use limited amounts of technical data and information (for example, but not limited to, information concerning Ordering Activity’s device, system, application software and peripherals) to facilitate the provision of Software updates, product support and other services (if any) attributable or related to the Software. Permuta may use this information as long as it is in a form that does not personally identify Ordering Activity in order to operate, improve, provide and develop other services, products and/or technologies, for research and development and for any other purpose expressly described to Ordering Activity as a part of Permuta’s products and services.

12. FEEDBACK. In the event that Ordering Activity provide any feedback, ideas, materials, suggestions, opinions, information or any other input to Permuta (“Feedback”), Ordering Activity acknowledge and agree that, while Permuta is under no obligation to consider or implement any such Feedback, Permuta and its successors and assigns receive an unconditional and unlimited right to use, reproduce, modify and disclose to others any such Feedback without any obligation to provide Ordering Activity with compensation or attribution. Further, Ordering Activity acknowledge and agree that any and all such Feedback is provided by Ordering Activity on a non-confidential basis and Ordering Activity waive and agree not to assert any rights (potential or vested) that Ordering Activity may have in the Feedback. Permuta acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

13. EXPORT RESTRICTIONS. The Software is subject to United States export laws and regulations. Ordering Activity must comply with all domestic and international export laws and regulations that apply to the Software. These laws include restrictions on destinations, end users and end use.

14. Reserved.

15. LEGAL EFFECT. This agreement describes certain legal rights. Ordering Activity may have other rights under the laws of Ordering Activity’s state or country. This agreement does not change Ordering Activity’s rights under the laws of Ordering Activity’s state or country if the laws of Ordering Activity’s state or country do not permit it to do so.

16. Reserved.

17. UNITED STATES GOVERNMENT USE RIGHTS. By using the Software, Ordering Activity agree that the Software is a “commercial item,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 and that all U.S. Government end users acquire the Software with only those rights set forth therein.

18. NOT FAULT TOLERANT. THE SOFTWARE IS NOT FAULT TOLERANT. BY USING THE SOFTWARE, ORDERING ACTIVITY AGREE TO IMPLEMENT AND ASSUME FULL RESPONSIBILITY FOR SAVING ALL OF ORDERING ACTIVITY’S FILES ONTO MAGNETIC TAPE OR OTHER OFFLINE MASS STORAGE MEDIA FOR THE PURPOSE OF PREVENTING LOSS OF DATA IN THE EVENT OF EQUIPMENT OR SOFTWARE (INCLUDING THIRD PARTY SOFTWARE) FAILURE OR DESTRUCTION. ORDERING ACTIVITY FURTHER AGREE THAT ORDERING ACTIVITY ASSUME FULL RESPONSIBILITY FOR MAINTAINING ORDERING ACTIVITY’S OWN SECURITY POLICIES AND PROCEDURES FOR THE PROTECTION OF ORDERING ACTIVITY’S DATA AND SFOTWARE.

19. WARRANTIES

a. **LIMITED WARRANTY.** For a period of one year from the date Customer is first licensed for a version of the Software (the “Warranty Period”), Permuta represents and warrants that it will use commercially reasonable efforts to cause the Software to conform, in all substantial respects, to the Permuta’s then-current technical documentation for the Software. If it does not, and Customer notifies Permuta within the Warranty Period, then Permuta will, at its option, (1) return the price Customer paid for the Software License or (2) repair or replace the Software.

b. **DISCLAIMERS OF WARRANTY.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 19, PART a, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, THE SOFTWARE AND ANY THIRD-PARTY SOFTWARE, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE SOFTWARE AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT THE SOFTWARE WILL BE FREE OF ERRORS.

20. Reserved.

21. Reserved.

**EXHIBIT C-**

**TERMS AND CONDITIONS OF DEFENSEREADY / FEDERALREADY ORDERING ACTIVITY SUPPORT for PERPETUALLY LICENSED SOFTWARE WITH ANNUAL SOFTWARE MAINTENANCE**

Permuta’s Ordering Activity Support Program ("Ordering Activity Support") is a cost effective, flexible program for Ordering Activities to plan, request, receive, and manage support for DefenseReady and FederalReady Products ("Products"). The following Terms and Conditions ("Terms") apply to Ordering Activity’s access to Ordering Activity Support for Perpetually Licensed Software covered under EXHIBIT B.

**Ordering Activity Support Program**

**Support Program Administration**

**Eligibility.** Ordering Activity must purchase Annual Software Maintenance ("SW Maintenance") for Products to receive Ordering Activity Support.

**Term.** The term of the Ordering Activity Support plan coincides with the Coverage Period of the associated Software Maintenance.

**Account Manager.** Permuta will designate two contacts to serve as the primary and secondary account managers to manage Permuta’s responsibilities associated with the Ordering Activity’s Support Plan.

**Enrollment Administrators.** Ordering Activity shall designate two contacts to serve as the primary and secondary enrollment administrators ("Enrollment Administrator") to manage Ordering Activity’s responsibilities associated with its Support Plan.

**Approved Requesters.** Ordering Activity shall designate approved requesters ("Approved Requesters") to manage Ordering Activity’s Support Plan. Approved Requesters are presumed to have the authorization and authority to request Support Tasks.

**Modifications.** Permuta may make commercially reasonable changes to the Ordering Activity Support program from time to time, without amendment to the Terms.

**Support Plans.** Included with the purchase of SW Maintenance at no additional cost is automatic enrollment in the “Standard” Ordering Activity Support Plan. Ordering Activity may select an alternative Support Plan with the purchase of SW Maintenance.

The following Support Plans are available:

- **Standard** – The Standard Plan is included with SW Maintenance at no additional cost. This Support Plan may be suitable for organizations with 1) mature deployments of the Products or 2) limited support budgets.
- **Silver** – The Silver Plan is designed for small organizations intending to extend the value from its current use of the Products.
- **Gold** – The Gold Plan is designed for mid-sized organizations intending to extend the value from its current use of the Products.
- **Platinum** – The Platinum Plan is designed for large organizations intending to extend the value from its current use of the Products.
- **OnBoard** – The OnBoard Plan is designed for new Ordering Activity’s intending to use Products operationally within a 12-month time.
- **Pilot** – The Pilot Plan is designed for potential Ordering Activity’s intending to conduct an operational pilot of the Products for qualification, evaluation, and/or comparative purposes.

If Permuta provides a Fix in connection with Ordering Activity Support, each Fix is licensed under the same terms as the Product to which it applies.

**Support Task Request Process.**

**Support Tasks.** Ordering Activity may only access Ordering Activity Support by requesting a Support Task through Ordering Activity’s Approved Requesters. The Support Task is administered by the Account Manager(s), in cooperation with the Enrollment Administrator(s) and Approved Requesters. At no additional cost, Permuta may provide tools, resources, and software to facilitate the Support Task request process.

**Types.** The types of Support Tasks available to the Ordering Activity under the Terms are:
• **Advisory Support** – Advisory support is available for short-term advice and guidance from Permuta for problems not covered with problem resolution support as well as requests for consultative assistance for design, development, deployment and operation issues.

• **Sustainment Support** – Sustainment support includes sustainment planning services, off-site integration test environments, update rollout testing, and periodic on-site support for applying updates, performing major upgrades, and products infrastructure optimization.

• **Problem Resolution Support (PRS)** – Problem resolution support is available for assistance with resolving problems with specific symptoms encountered while using the Products, where there is a reasonable expectation that the problem is caused by the Products.

• **Rapid On-Site Support (ROSS)** – Rapid onsite support is available for urgent requirements for onsite support by Permuta resources necessitating less than 48 hours’ notice. Permuta’s ability to provide rapid onsite support is subject to Permuta’s resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta will redeem Support Credits to account for travel time at a rate of one Support Credit for each required non-business hour of travel not otherwise accounted for in the support day.

• **Configuration Support** – Configuration support is available for ordering activities requiring minor configuration changes on a short-term basis.

• **Training Support** – Training support is available to support curriculum development and to conduct training.

• **Cyber Security Support** – Subject to availability of Permuta resources, cyber security support may be available to support ordering activity’s cyber security needs in relation to its intended use of the products.

• **Scheduled On-Site Support** – Scheduled on-site ordering activity support is available for ordering activities subject to Permuta’s resource availability and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta may redeem Support Credits to account for travel time at a rate of one-half Support Credit for each required nonbusiness hour of travel not otherwise accounted for in the support day.

• **Solution Development Support** – Solution development support is available for ordering activities requiring or engaged in a complex custom solution development effort following commercial best practices.

• **On-Boarding Support** – On-boarding support is available for new implementations and integration services of a new ordering activity.

**Support Credits.**

**General.** As part of the ordering activity’s support plan, Permuta will issue support credits redeemable for support tasks. Credits may only be redeemed for 1) support tasks following the support task request process set forth in section 1.3 or 2) managed ordering activity support projects in accordance with section 1.5. Support credits have no cash value, are non-transferable and nonrefundable. All support credits are valid for the term of the support plan and expire immediately upon expiration of the SW maintenance coverage period or termination of ordering activity’s support plan.

**Roll-Over Support Credits.** Permuta will reissue a limited quantity of expired support credits (“Roll-Over Support Credits”) at the start of the follow-on SW maintenance’s coverage period. Section 7.8 identifies the roll-over support credits limit for each available support plan. The reissue quantity will not exceed the limit of the expiring support plan or the follow-on support plan associated with a SW maintenance renewal, whichever is lowest.

**Pre-determined Redemption Quantity.** In accordance with commercially acceptable procedures, Permuta will automatically accept and process valid support task requests of a type having a predetermined redemption rate as set forth below in section 7.4.4.

**Redemption Quantity Approval.** A ordering activity enrollment administrator will be required to issue Permuta a written authority to proceed for support task requests of a type not having a predetermined redemption rate. The authority to proceed must authorize a redemption quantity specified by Permuta for each support task request.

**Support Credit Redemption Rate.** Support credits will be redeemed by ordering activity at the following rates for the support tasks listed below:

<table>
<thead>
<tr>
<th>Support Task Type</th>
<th>Redemption Rate Unit (as reasonably determined by Permuta)</th>
<th>Support Credit Redemption Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory Support</td>
<td>per task</td>
<td>2</td>
</tr>
<tr>
<td>Sustainment Support</td>
<td>by task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Problem Resolution Support</td>
<td>per case</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Support Task Type</th>
<th>Redemption Rate Unit (as reasonably determined by Permuta)</th>
<th>Support Credit Redemption Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rapid On-Site Support</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Configuration Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Training Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Cyber Security Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Scheduled On-Site Support</td>
<td>Day</td>
<td>6</td>
</tr>
<tr>
<td>Solution Development Support</td>
<td>by Task / by Lot</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>On-Boarding Support</td>
<td>by Task / by Lot</td>
<td>To be mutually agreed</td>
</tr>
</tbody>
</table>

**Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required to avoid disrupting or otherwise negatively impacting its intended use of the Products. Permuta may refuse to perform Support Tasks if Ordering Activity has insufficient Support Credits.

**Managed Ordering Activity Support Projects.** As part of an eligible Support Plan and when appropriate, Permuta may perform certain support services as Managed Ordering Activity Support Projects (“Projects”). Projects will be used to deliver to Ordering Activity mutually agreed to deliverables (“Deliverables”) addressing requirements related to the Ordering Activity’s desired use of the Products.

**Statement of Work.** Permuta will perform Projects in accordance with Permuta’s commercially reasonable standard patterns and practices for processes, documentation, communication, design, configuration, customization, code, test, and operational support. Permuta shall only perform Projects if the parties have executed, and subject to, a mutually agreed to statement of work (“SOW”) documenting the specific terms and conditions (including those relating to intellectual property rights) governing such Support Services and Deliverables. Ordering Activity and Permuta agree to each perform its respective obligations in each SOW.

**Support Credit Redemption Plan.** The terms of the Project SOW shall include a Support Credit Redemption Plan specifying a fixed quantity of Support Credits the Ordering Activity would be required to redeem and the redemption scheduled.

**Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required by the Support Credit Redemption Plan without disrupting or otherwise negatively impacting its intended use of the Products.

**Response Levels.** When submitting a Support Request, Ordering Activity is responsible for specifying the initial severity level in consultation with Permuta in accordance with the Ordering Activity situation. The Support Request severity level will determine Permuta’s expected response and Ordering Activity’s expected response as identified in the table below.
### 1. Submission via phone only

<table>
<thead>
<tr>
<th>Severity</th>
<th>Situation</th>
<th>Permuta’s Expected Response</th>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catastrophic business impact:</td>
<td>Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention</td>
<td>1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as soon as possible Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of Permuta’s senior executives</td>
<td>Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority</td>
</tr>
</tbody>
</table>

### A. Submission via phone only

<table>
<thead>
<tr>
<th>Severity</th>
<th>Situation</th>
<th>Permuta’s Expected Response</th>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical business impact:</td>
<td>Significant loss or degradation of services Needs attention within 1 hour</td>
<td>1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as required Continuous effort on a 24x7 basis Notification of Permuta’s senior managers</td>
<td>Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority Management notification</td>
</tr>
</tbody>
</table>

### B. Submission via phone or web

<table>
<thead>
<tr>
<th>Severity</th>
<th>Situation</th>
<th>Permuta’s Expected Response</th>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate business impact:</td>
<td>Moderate loss or degradation of services but work can reasonably continue in an impaired manner Initial response in 4 Business Hours or less Effort during Business Hours only</td>
<td>Allocation of appropriate resources to sustain Business Hours continuous effort</td>
<td>Access and response from change control authority within 4 Business Hours</td>
</tr>
</tbody>
</table>
C. Submission via phone or web

| Minimum business impact: Substantially functioning with minor or no impediments of services. Needs attention within 4 Business Hours | Initial response in 8 Business Hours or less Effort during Business Hours only | Accurate contact information on case owner Responsive within 24 hours |

Permuta may downgrade the severity level if Ordering Activity is not able to provide adequate resources or responses to enable Permuta to continue with problem resolution efforts.

**Support Plan Credits.**

Permuta will issue Support Credits as they are earned, either monthly or annually. The Support Credits will be earned in accordance with the following table.

<table>
<thead>
<tr>
<th>Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product Type</strong></td>
</tr>
<tr>
<td>----------------------------------</td>
</tr>
<tr>
<td>Operating System Environment (OSE) License</td>
</tr>
<tr>
<td>Basic Professional User CAL &amp; Essential CAL</td>
</tr>
<tr>
<td>Essential CAL</td>
</tr>
<tr>
<td>Additional Prod Instance</td>
</tr>
</tbody>
</table>

**Support Plan Conditions and Limitations.**

Terms, conditions, and limitations will vary for each Support Plan. The following table identifies the applicable terms, conditions, and limitations for Support Plans available under the Terms.

<table>
<thead>
<tr>
<th>Applicable Terms, Conditions, and Limitations by Support Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Term, Condition, or Limitation</strong></td>
</tr>
<tr>
<td>----------------------------------</td>
</tr>
<tr>
<td>Eligible for Advisory Support</td>
</tr>
<tr>
<td>Eligible for Sustainment Support</td>
</tr>
<tr>
<td>Service Type</td>
</tr>
<tr>
<td>------------------------------------</td>
</tr>
<tr>
<td>Eligible for Problem Resolution</td>
</tr>
<tr>
<td>Eligible for Rapid On-Site Support</td>
</tr>
<tr>
<td>Eligible for Configuration Support</td>
</tr>
<tr>
<td>Eligible for Training Support</td>
</tr>
<tr>
<td>Eligible for Cyber Security Support</td>
</tr>
<tr>
<td>Eligible for Scheduled On-Site Support</td>
</tr>
<tr>
<td>Eligible for Credit Redemption Plan</td>
</tr>
<tr>
<td>Eligible for Solution Development Support</td>
</tr>
<tr>
<td>Eligible for On-Boarding Support</td>
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<table>
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<tr>
<th>Level</th>
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<th>1, A, B, C</th>
<th>1, A, B, C</th>
<th>A, B, C</th>
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</thead>
<tbody>
<tr>
<td>Available Response Level</td>
<td>C</td>
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<td>1, A, B, C</td>
<td>1, A, B, C</td>
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</table>

<table>
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<tr>
<th>Credits</th>
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<th>200</th>
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<td>Rollover Support Credits</td>
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<td></td>
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</table>

<table>
<thead>
<tr>
<th>Requestors</th>
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<th>2</th>
<th>4</th>
<th>2</th>
<th>2</th>
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</thead>
<tbody>
<tr>
<td>Allowed Number of Approved Requestors (Other than admins)</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Additional Support Services Provisions.**

Ordering Activity may not, unless specifically authorized by Permuta in writing, i) rent, lease, lend or host any Deliverables (including any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services) or Fixes; ii) reverse engineer, decompile or disassemble Fixes or Deliverables, except to the extent expressly permitted by applicable law; or iii) transfer licenses to, or sublicense, Fixes or Deliverables to any government entity or quasi-governmental entity or any other third party.

Permuta may request that Microsoft deliver problem resolution support on Permuta’s behalf to Ordering Activity subject to the Terms. Permuta will coordinate and participate in the delivery of subcontracted Microsoft services. In order for Permuta to provide subcontracted Microsoft services, Ordering Activity will be required to provide consent to provide the required contact information to Microsoft.
General Terms

**Fees and Payment Terms.** The fees and payment terms applicable to Ordering Activity Support are set forth in the GSA schedule contract, schedule pricelist and applicable purchase order.

**Ordering Activity Support Term Updates.** When Ordering Activity renews or purchases SW Maintenance, the then-current Terms, underlying GSA Schedule Contract, Schedule pricelist, and applicable purchase order will apply and will not change during Ordering Activity’s coverage period of the associated SW Maintenance purchase.

**Ownership and License.** Except as otherwise set forth in a Statement of Work (SOW) in accordance with section 1.5, this section governs the ownership and use rights of any computer code or other materials that may be provided under these Terms.

- **Fixes.** Except as otherwise provided herein, the underlying GSA schedule contract, schedule pricelist and applicable purchase order Ordering Activity’s right to use fixes is governed by the license agreement for the affected Product or, if the fix is not provided for a specific product, any other use terms provided by Permuta. All fixes provided are licensed to Ordering Activity. For the purposes of these Terms, “fixes” means any Product related bug fixes, workarounds, patches, beta fixes or beta builds other than sample code or materials. Permuta does not transfer ownership rights in Products and reserves all rights not expressly granted.

- **Pre-existing Work.** All rights in any computer code or materials developed or otherwise obtained independently of the efforts of a Party under these Terms (“Pre-existing Work”) shall remain the sole property of the Party providing the Pre-existing Work. During the performance of Ordering Activity Support services, each Party grants to the other Party (and their contractors as necessary) a temporary, nonexclusive license to use, reproduce and modify any of its Pre-existing Work provided to the other Party solely for the performance of such Services. Permuta grants Ordering Activity a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for Ordering Activity’s internal business operations and without any obligation of accounting or payment of royalties. Ordering Activity’s licenses to Permuta’s Pre-existing Work is conditioned upon Ordering Activity’s compliance with these Terms and the perpetual license applies solely to Permuta’s Pre-existing Work that is left with Ordering Activity at the conclusion of Permuta’s performance of services.

- **Materials.** All rights in any materials developed by Permuta (other than software code) and provided to Ordering Activity in connection with the Ordering Activity Support services (“Materials”) shall be owned by Permuta except to the extent such Materials constitute Ordering Activity’s Pre-existing Work. We grant Ordering Activity a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for Ordering Activity’s internal business operations and without any obligation of accounting or payment of royalties. All rights not expressly granted, are reserved.

- **Reservation of Rights.** All rights not expressly granted in this Section 2.3 are reserved.

- **Restrictions on Use.** Ordering Activity may not (i) rent, lease, lend or host any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services (“Deliverables”) or fixes, except as otherwise provided herein; (ii) reverse engineer, de-compile or disassemble fixes or Deliverables, except to the extent expressly permitted by applicable law despite this limitation; or (iii) transfer licenses to, or sublicense fixes or Service Deliverables to any government entity or quasi-governmental entity, except as specifically authorized herein.

- **Export.** Ordering Activity agree to comply with all applicable international and national laws that apply to the products, fixes and Service Deliverables, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

- **Permuta-Provided Data.** Permuta may use or provide Permuta-Provided Data in connection with Ordering Activity’s access to Ordering Activity Support. Ordering Activity acknowledges that Permuta-Provided Data has commercial value. All rights in Permuta-Provided Data shall be owned by Permuta unless explicitly stated otherwise in written form by Permuta. All rights not expressly granted to Ordering Activity, are reserved to Permuta.

- **Commercial Item.** Ordering Activity Support is a “commercial item,” as that term is defined in 48 C.F.R. 2.101, consisting of installation services, maintenance services, repairs, training services, and other services for support of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. Ordering Activity acquires Ordering Activity Support with only the rights set forth in these Terms. Ordering Activity acknowledges and agrees that Permuta sells Ordering Activity Support as a commercial item only and will engage as a subcontractor for Ordering Activity Support subject only to the required U.S. Government flowdown clauses listed at 48 CFR 52.244-6, “Subcontracts for Commercial Items”, plus other terms necessary in meeting performance obligations under the specific Government Contract under which Ordering Activity purchases the Products.

- **Subcontractors.** Permuta may hire subcontractors to provide Support Services on its behalf. Any such subcontractors will be required to act consistently with this Agreement and will only be permitted to obtain Ordering Activity Data to deliver the services Permuta is obligated to provide and will be prohibited from using Ordering Activity Data for any other purpose. Permuta shall maintain responsibility for the actions of its subcontractors.

- **General Representations and Warranties.** Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under these Terms, (c) the person signing these Terms on its behalf has been duly authorized and empowered to accept these Terms, and (d) these Terms are valid, binding and enforceable against it accordingly.

- **Additional Warranties.** For a period of one year from the commencement of the applicable Ordering Activity Support Plan Term (the “Warranty Period”) Permuta represents and warrants that it will use commercially reasonable efforts to cause Ordering Activity Support Deliverables to conform, in all substantial respects, to the Permuta’s then-current technical documentation for the Products. If it does not, and Ordering Activity notifies Permuta within the Warranty Period, then Permuta will take commercially reasonable measures to repair or replace the Ordering Activity Support Deliverables. Ordering Activity waives any breach of warranty claims not made during the Warranty Period.
Permuta warrants that all Ordering Activity Support will be performed with professional care and skill. If Permuta fails to do so and Ordering Activity notifies Permuta within 90 days of the date of performance, then Permuta will re-perform the Ordering Activity Support.

**Disclaimers of Warranty.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4.1 and 4.2, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, PRODUCTS AND ANY THIRD-PARTY SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY.

THE ORDERING ACTIVITY SUPPORT AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT CUSTOMER SUPPORT WILL BE PROVIDED FREE OF ERRORS.

**Effect of Termination.**

Upon any termination or expiration of the Support Plan: (a) all rights and licenses granted to Ordering Activity under these Terms will immediately cease; (b) Ordering Activity will within thirty (30) days of receipt of invoice pay to Permuta all amounts due and payable up to the effective date of termination of the Support Plan. Notwithstanding any terms to the contrary in these Terms, Sections 3 and 4 will survive any termination or expiration of the Support Plan.

**Definitions.**

- "Software Maintenance" means the right to upgrade to future Software versions. Software maintenance is acquired by the Ordering Activity for a fee on an annual basis. The right to upgrade is limited to new versions of the associated Software during the Software Maintenance Coverage Period.
- "Business Hours" means as 9:00 AM to 5:30 PM Eastern Standard Time, excluding Federal holidays and weekends. Reserved.
- "Coverage Period" means the 12 month period during which the Ordering Activity is eligible for the Software Maintenance benefits of Perpetually Licensed Software.
- "Ordering Activity Data" means all data, including all text, sound, video, or image files, and software, that are provided to Permuta by, or on behalf of, Ordering Activity through use of the Products.
- "Ordering Activity Support" means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity under these Terms.
- "Disclosing Party" means the party that discloses Confidential Information to the Receiving Party.
- "End User" means any person Ordering Activity permits to access Ordering Activity Data hosted in the Products or otherwise uses the Products. Employees of Affiliates of Ordering Activity may be End Users.
- "Fixes" are fixes, modifications or enhancements, or their derivatives for the Products, that Permuta either releases generally (such as service packs) or that Permuta provides to Ordering Activity to address a specific issue.
- "Follow-on Support Plan" means a future Support Plan associated with a Subscription renewal.
- "Hosted Services" means the hosted services provided by Permuta, directly or indirectly, to Ordering Activity.
- "Intellectual Property Rights" means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.
- "Managed Ordering Activity Support Project" means a carefully planned, multi-phase effort contemplated and executed in performance of a Statement of Work (SOW).
- "Microsoft" means Microsoft Corporation.
- "Permuta-Provided Data" means any data provided by Permuta to Ordering Activity under this Agreement, including Sample Data. Permuta-Provided Data excludes Ordering Activity Data.
- "Perpetually Licensed Software" means the version(s) of Software licensed by the Ordering Activity for which the Ordering Activity's use rights do not expire. Unless Software Maintenance is acquired for a fee, Ordering Activity's use rights are limited to the versions of software accessed at the time the perpetual licenses were purchased and during a valid Software Maintenance Coverage Period.
- "Previews" means preview, trial, beta, or other pre-release version or feature of the Products offered by Permuta to obtain Ordering Activity feedback.
- "Product(s)" means any or all product(s) sold to Ordering Activity by Permuta, such as all Software, Hosted Services and other web-based services, including Previews.
- "Purchase Agreement" means the binding agreement between Ordering Activity and Reseller or Prime Contractor under which Ordering Activity orders Products and accepts the Terms.
- "Receiving Party" means the party that receives Confidential Information from the Disclosing Party.
- "Reseller" means any reseller authorized by Permuta to resell the Products and Software to Ordering Activity.
- "Roll-Over Support Credits" means a limited quantity of expired support credits reissued in a Follow-on Support Plan in accordance with section 7.4.2.
- "Sample Data" means data in, originating from, or derived from an information system consumable form that mimics or is representative of real-world operational data which may be used for testing, demonstrations or other purposes and that is made available to Ordering Activity under this Agreement.
- "Security Policy" means the collective policies and procedures followed by Permuta to establish and maintain the Products’ Trustworthiness as required by Ordering Activity.
- "Software" means any software provided by Permuta, directly or indirectly, to Ordering Activity. Software does not include Hosted Services but Hosted Services may include Software.
- "Support Credits" are allotments for Ordering Activity Support that are earned either monthly or annually with a Ordering Activity Support Plan.
- "Support Credit Redemption Plan" means a detailed plan for redeeming no less than 500 Support Credits in support of a specific Ordering Activity initiative or set of requirements related to the Ordering Activity’s desired use of Products.
- "Support Plan" means one of the support plans listed in Section 7.2 in which Ordering Activity enrolls during a Subscription Term.
- "Support Task" means a specific instance of Ordering Activity’s access to Permuta expertise or technical support in connection with a Ordering Activity Support Plan.
“Use Rights” means the rights of members, users, mission owners, and other End Users to use the Software as described by Permuta from time to time.
1. **Scope.** This Rider and the attached PC Matic, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase
Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
NOTICE TO ALL USERS Carefully read the following legal agreement ("Agreement"), which sets forth license terms for PC Matic software. If someone else uses a copy of PC Matic installed by you, he or she may do so only subject to all conditions, obligations and limits described in this Agreement.

LICENSE GRANT PC Matic, Inc hereby licenses you for unlimited use of PC Matic on your personal computer(s), such as desktop and laptop, or for multiple users on a single personal computer, but not both, and to make one copy in machine-readable form for backup purposes only. "You" means the authorized Ordering Activity placing an order under the GSA Schedule contract. "Use" means storing, loading, installing, executing or displaying PC Matic. Within any such copy, you must reproduce the copyright notices and any other proprietary legends that were on the original downloaded copy of PC Matic. No license, right or interest in any trademark, trade name or service mark of PC Matic, Inc or any third party is granted under this License. You may not modify PC Matic or disable any licensing or control features of PC Matic except as an intended part of PC Matic's programming features. This license is not transferable to another organization or individual. Any reproduction or redistribution of PC Matic not in accordance with the License Agreement is prohibited by law.

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RESTRICTIONS You may not rent, lease, loan or resell PC Matic. You may not permit third parties to benefit from the use or functionality of PC Matic via a timesharing, service bureau or other arrangement. You may not transfer any of the rights granted to you under this Agreement. You may not reverse engineer, decompile, or disassemble PC Matic, except to the extent that the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, PC Matic in whole or in part. You may not copy PC Matic or Documentation except as expressly permitted above. You may not remove any proprietary notices or labels on PC Matic.

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EXPORT CONTROLS You may not download or otherwise export or reexport the Software or any underlying information or technology except in full compliance with all laws of the United States and other applicable laws and regulations.

GOVERNING LAW This license will be governed by United States Federal law.

LIMITED WARRANTY PC MATIC WARRANTS THAT THE FOREGOING PC MATIC AND THE ACCOMPANYING FILES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF
YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PC MATIC AND THE ACCOMPANYING FILES WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, PC Matic AND THE ACCOMPANYING FILES ARE SOLD "AS IS" AND WITHOUT WARRANTIES AS TO PERFORMANCE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES EXPRESSED OR IMPLIED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES IN NO EVENT SHALL PC Matic, Inc OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF, OR INABILITY TO USE, PC Matic, EVEN IF PC Matic, Inc HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

SEVERABILITY In the event of invalidity of any provision of this license, the parties agree that such invalidity shall not affect the validity of the remaining portions of this license.

ENTIRE AGREEMENT This Agreement, together with the underlying GSA Schedule contract, Schedule pricelist and applicable purchase orders, is the entire agreement between you and PC Matic, Inc. which supersedes any prior agreement or understanding, whether written or oral, relating to the subject matter of this license.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Phantom Cyber Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

3. **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

4. **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

5. **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

6. **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

7. **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

8. **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

9. **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

10. **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

11. **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

12. **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

13. **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract,
and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

14. Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

15. Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

16. Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504, 28 U.S.C. § 2412).

17. Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

18. Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

19. Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

20. Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

21. Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

22. Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

23. Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

24. Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

25. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PHANTOM CYBER CORPORATION

PHANTOM CYBER CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

Phantom™ Product License Terms

Your access to and use of this software, including any updates or support you may receive from us (collectively “Phantom”), is governed by the terms and conditions of this agreement between you and Phantom Cyber Corporation, as supplemented or modified by the underlying GSA Schedule Contract, Schedule Pricing List and Purchase Orders. As used in this agreement, “you” refers to you as an individual as well as other individuals you allow to access or use Phantom on your computer systems, and any legal entity you control, work for, or represent when you access or use Phantom. The terms “us” and “we” refers to Phantom Cyber Corporation.

By Executing this agreement in writing, you accept these terms and conditions. If you do not accept them, DO NOT EXECUTE THIS DOCUMENT.

1. Licensed Use Rights and Limits. Phantom is licensed to you on an annual subscription basis for installation and permitted use by you for your internal business purposes on equipment you own or control located in the United States (your “System”). Your permitted use of Phantom is subject to the limits of the subscription you selected when ordering Phantom in terms of the duration of your subscription set forth in the ordering document (the “Term”) as well as the number of “Actions” per day (the 24 hour period measured using Coordinated Universal Time “UTC”) executed by Phantom on your System based on the “Playbooks” you have selected for use, as these terms are used in the Phantom product documentation. If you agree with all the terms and conditions of this agreement and execute it in writing, then you may install and use Phantom on your System up to the maximum number of permitted daily Actions. You may not share a license you acquire with a third party, nor may you install or use Phantom on equipment that you do not own or control.

(a) Reserved.

(b) Reserved.

(c) Full Enterprise Version; Support. If you acquire a license for the “Full Enterprise” version of Phantom, you will receive a license key which will enable your installation of Phantom to operate with full functionality during the Term up to the maximum number of daily Actions applicable to the subscription you ordered. You will also be entitled during the Term to limited customer support in the English language made available through our website including support forums, product documentation, tutorials, community pages, and product updates if and when available. If your license to the Full Enterprise Version expires and is not renewed, your license will then convert to that of a limited functionality Community Edition and you will no longer be eligible for customer support.

2. Other License Limitations. Phantom is licensed, not sold. Phantom is protected by copyright and other intellectual property laws and treaties. This agreement only gives you limited rights to use Phantom. We reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use Phantom only as expressly permitted in this agreement. In doing so, you must comply with technical limitations in Phantom that only allow you to use it in certain ways. You may not:

- work around the technical limitations in Phantom;
- reverse engineer, decompile or disassemble Phantom, except and only to the extent that applicable law expressly permits, despite this limitation;
- install on unauthorized computers or use Phantom beyond limits specified in this agreement;
- use Phantom to develop or disclose the results of any benchmarking of performance;
- publish Phantom for others to copy;
- distribute Phantom to any third party;
- rent, lease or lend Phantom; or
- transfer Phantom or this agreement to any third party.

2. Reserved.

3. Your Feedback. If you give feedback about Phantom to us, you give to us, without charge, the right to use that feedback for any purpose. You will not give feedback that is subject to a license that requires us to license our software or documentation to third parties because we include your feedback in them. These rights survive this agreement.

4. Customer service. We will use commercially reasonable efforts during our normal business hours to provide or make available limited customer support services to you upon request related to Phantom during the Term if you have a full enterprise license. Any supplemental software code, updates or materials provided to you as part of customer service for Phantom will be considered part of Phantom and subject to the terms and conditions of this agreement.

5. U.S. Government Restricted Rights. Phantom and its accompanying documentation are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-14 “Commercial Computer Software - Restricted Rights” and DFARS 227.7202, “Rights in Commercial Computer Software or Commercial Computer Software Documentation,” as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of Phantom by the U.S. Government shall be solely in accordance with the terms of this agreement.

6. Export Restrictions. Phantom is subject to applicable U.S. export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to Phantom. These laws include restrictions on destinations, end users and end use. You agree not to export Phantom to any prohibited country, entity, or person for which an export license or other governmental approval is required.

7. DISCLAIMER OF WARRANTIES. We warrant that Phantom will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, PHANTOM IS LICENSED “AS-IS.” TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, AND WE MAKE NO WARRANTIES THAT: (I) OUR PRODUCTS, SERVICES, AND/OR WEBSITE WILL MEET YOUR REQUIREMENTS; (II) OUR PRODUCTS, SERVICES, AND/OR WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (III) THE RESULTS THAT MAY BE OBTAINED FROM YOUR USE OF THE PRODUCTS, SERVICES, AND/OR USE OF THE WEBSITE WILL BE ACCURATE OR RELIABLE; (IV) THE QUALITY OF ANY PRODUCTS AND SERVICES PURCHASED OR INFORMATION OBTAINED BY YOU THROUGH THE PRODUCTS, SERVICES, AND/OR WEBSITE WILL MEET YOUR EXPECTATIONS; OR (V) ANY ERRORS IN THE PRODUCTS, SERVICES, AND/OR EBSITE WILL BE CORRECTED.

PHANTOM IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS WHERE A SOFTWARE MALFUNCTION COULD CAUSE PROPERTY DAMAGE OR PERSONAL INJURY, AND WE SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

WE DO NOT WARRANT IN ANY WAY THIRD-PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO “PLAYBOOKS” OR “APPS” YOU MAY DEVELOP YOURSELF OR OBTAIN FROM ANY THIRD PARTIES THROUGH OUR COMMUNITY PAGES OR ELSEWHERE. YOU ASSUME ALL RISKS IN USING THIRD-PARTY PRODUCTS OR SERVICES WITH PHANTOM.

8. LIMITATION ON AND EXCLUSION OF DAMAGES. OUR LIABILITY UNDER THIS AGREEMENT IS LIMITED. YOU CAN RECOVER ONLY DIRECT DAMAGES UP TO THE AMOUNT THAT YOU PAID FOR PHANTOM. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES. THIS LIMITATION APPLIES TO ALL CLAIMS RELATED TO PHANTOM, INCLUDING WITHOUT LIMITATION CLAIMS FOR BREACH OF CONTRACT, BREACH OF WARRANTY, GUARANTEE OR CONDITION, STRICT LIABILITY, NEGLIGENCE, OR OTHER TORT TO THE EXTENT PERMITTED BY APPLICABLE LAW. IT ALSO APPLIES EVEN IF WE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. Reserved.

10. Applicable Law; Forum. California state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. Without limiting the parties' rights and obligations under the Arbitration Provision of this agreement, you agree that any lawsuit filed to resolve any Claim you have with us arising out of or relating to this agreement will be brought exclusively in a state or federal court located in or for Santa Clara County, and you agree to submit to the personal jurisdiction of such courts for the purpose of such Claims.

11. Entire Agreement; Severability. This Agreement, together with the underlying GSA Schedule Contract and Schedule Pricelist, as well as any ordering documents prepared or signed by Phantom specifying the Term of the subscription and applicable limitations (such as the maximum number of daily Actions) constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This agreement may not be amended, supplemented or otherwise modified except by a written agreement executed by an authorized representative of both parties. If for any reason any provision of this agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision; (b) such provision will remain in effect to the extent that it is not invalid or unenforceable; and (c) such invalidity or unenforceability will not affect any other provision of this agreement.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Pivot3, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15)), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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**nnn** Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

**ooo** Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**ppp** Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**qqq** Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**rrr** Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**ssq** Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**ttt** Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**uuu** Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the
full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

vvv) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

www) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

xxx) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

yyy) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

zzz) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

aaaa) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

bbbb) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

cccc) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

dddd) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

eeee) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

ffff) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

gggg) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or
compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

h) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

iii) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A – PIVOT3

END USER LICENSE AGREEMENT

PIVOT3

This License Agreement (the “Agreement”) is a legal agreement between you (“Ordering Activity” or “End User”) and Pivot3, Inc (“Pivot3”). This Agreement governs your use of the Pivot3 Software, the Pivot3 Management Application(s), and other related software distributed with this Agreement (the “Software”) and the accompanying end-user technical documentation and help files provided by Pivot3 with the Software (the “Documentation”). You must accept the terms of this Agreement before using such Software and Documentation.

If you do not agree to the terms of the Agreement, you are not granted any rights whatsoever in the Software or Documentation. If you are not willing to be bound by these terms and conditions, do not download or install the Software.

1. LICENSE.

1.1 License Grant. Subject to the terms and conditions of this Agreement, Pivot3 grants to End User a personal, limited, non-exclusive, non-transferable, non-sublicensable right and license to (a) reproduce (solely to download and install) and execute one (1) copy of the Software on a single server controlled by End User solely for End User’s internal business purposes and (b) make one (1) copy of the Software and Documentation solely for backup and/or archival purposes.

1.2 Restrictions. End User shall not, and shall not permit any third party to: (a) distribute, sell, lease, license, rent, loan, or otherwise transfer the Software or Documentation, with or without consideration; (b) access or use the Software or Documentation except as expressly permitted above; (c) make available the Software via a timesharing, service bureau, or other arrangement; (d) reverse engineer, decompile, or disassemble the Software or otherwise attempt to derive the source code thereof; (e) modify, or create or develop derivative works based upon, the Software or Documentation, in whole or in part; (f) reproduce the Software or Documentation, except as expressly permitted in Section 1.1(b) above; (g) incorporate the Software into, or combine the Software with, other software not licensed under this Agreement; (h) remove, alter, or obscure any proprietary notices or labels on the Software or Documentation; (i) use the Software or Documentation in violation of any law or regulation; or (j) use the Software or Documentation for purposes of competitive analysis of the Software or the development of a competing software product or service.

1.3 Third Party Software. Certain items of software included with the Software are licensed from third parties subject to the terms and conditions provided by such third parties (“Third Party Software”). The Third Party Software is not subject to the terms and conditions of Sections 1.1 and 1.2. Instead, each item of Third Party Software is licensed under the terms of the license that accompanies such Third Party Software. Nothing in this document limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable license for the Third Party Software.

1.4 Additional Software and/or Services. Except as expressly provided herein, neither Pivot3 nor any of its licensors or suppliers is obligated to provide any maintenance or support services or updates to the Software. In the event that Pivot3 does provide End User with updates or upgrades to the Software, the terms and conditions of this Agreement shall apply to End User’s use of any such updates or upgrades.

2. PROPRIETARY RIGHTS. The Software is licensed, not sold. Pivot3 and its licensors retain exclusive ownership of all worldwide copyrights, trade secrets, patents, and all other intellectual property rights throughout the world and all applications and registrations therefore, and in to the Software and Documentation and any full or partial copies thereof, including any additions or modifications thereto. End User acknowledges that, except for the limited license rights expressly provided in this Agreement, no right, title, or interest to the intellectual property in the Software or Documentation is provided to End User, and that End User does not obtain any rights, express or implied, in the Software or Documentation. All rights in and to the Software not expressly granted to End User in this Agreement are expressly reserved to Pivot3 and its licensors. The Pivot3 trademark and other trademarks and logos are the trademarks of Pivot3, its affiliates, and their respective licensors. This Agreement does not permit End User to use any such trademarks.

3. RESERVED.

4. WARRANTY.

4.1 Performance Warranty. For a period of ninety (90) days after delivery of the Software to End User (the “Software Warranty Period”), Pivot3 warrants that the Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system supported by Pivot3), will operate substantially as described in the Documentation. Pivot3 does not warrant that End User’s use of the Software will be error-free or uninterrupted. Pivot3 will, at its own expense and as its sole obligation and End User’s exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to Pivot3 by End User in writing during the Software Warranty Period or, if Pivot3 determines that it is unable to correct the error, Pivot3 will refund to End User all Fees paid for such nonconforming Software, in which case this Agreement and End User’s right to use such Software will terminate.

4.2 Disclaimer. THE EXPRESS WARRANTIES IN SECTION 4.1 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE OR DOCUMENTATION, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 4.1, THE SOFTWARE IS PROVIDED “AS-IS” AND WITH ALL FAULTS, AND THE ENTIRE RISK AS TO
Satisfactory quality, reliability, availability, accuracy, and effort is with End User. End User acknowledges and agrees that End User has not relied on any oral or written information or advice, whether given by Pivot3, its suppliers, licensors, agents, or employees.

5. RESERVED.

6. **Confidential Information.** The Software and Documentation and the structure, organization, and source code of the Software, including but not limited to the shell scripts of the Software, are confidential and proprietary information (“Confidential Information”) of Pivot3 and/or its licensors. End User agrees to (a) safeguard such Confidential Information with the same degree of care that End User uses to safeguard its own confidential and proprietary information of a similar nature, but with no less than reasonable care; (b) not disclose or make available such Confidential Information to anyone except End User’s employees having a need to know for purposes related to this Agreement and only insofar as such persons are bound by nondisclosure agreements consistent with these non-disclosure terms; and (c) not use the Confidential Information except to exercise the license rights expressly granted in this Agreement.

7. **Term and Termination.** This Agreement will remain in effect until terminated. End User may terminate this Agreement by removing the Software from End User’s computers, ceasing all use thereof, and destroying all copies of the Software and Documentation and certifying to Pivot3 that it has done so.

8. **Export Controls.** End User acknowledges and agrees that the Software and Documentation which is the subject of this Agreement may be controlled for export purposes. End User agrees to comply with all United States export laws and regulations including, but not limited to, the United States Export Administration Regulations, International Traffic in Arms Regulations, directives and regulations of the Office of Foreign Asset Control, treaties, Executive Orders, laws, statutes, amendments, and supplement thereto. End User assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation.

9. **U.S. Government End Users.** The Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.

10. **Miscellaneous.** This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase orders, is the complete and exclusive agreement between the parties relating to the Software and Documentation, and supersedes all prior or contemporaneous proposals, representations, understandings, or agreements relating thereto, whether oral or written. Software shall be deemed irrevocably accepted by End User upon installation. All waivers must be in writing and signed by both parties. The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof. The headings in this Agreement do not affect its interpretation. This Agreement shall be interpreted without giving effect to any presumptions against the drafting party. Neither party may assign or transfer any of its rights or obligations under this Agreement to a third party without the prior written consent of the other party. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Should you have any question about this Agreement, or if you desire to contact Pivot3, please contact us by mail at Pivot3, Inc, 221 West 6th St., Suite 750; Austin, TX 78701.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Procore Technologies, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereeto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.212-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any
specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PROCORE TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS

PROCORE Subscription TERMS

1. Definitions. The capitalized terms listed below have the following meanings:
   2.1 “Agreement” means, collectively, the terms of the Ordering Document, the underlying GSA Schedule Contract, the Schedule pricelist, and these terms.
   2.2 “Authorized User” means any individual who is authorized by virtue of such individual’s relationship to, or permissions from, Ordering Activity, to access and use the Services pursuant to Ordering Activity’s rights under this Agreement.
   2.3 “Construction Volume” means the aggregate dollar value of the construction work performed, planned, or put in place by Ordering Activity for all Ordering Activity Projects during a given time period, most often a one-year period.
   2.4 “Ordering Activity Content” means any content created by or on behalf of Ordering Activity or an Authorized User in connection with the Services and Ordering Activity Projects.
   2.5 “Ordering Activity Data” means the data provided by Ordering Activity to Procore regarding Authorized Users, including personally identifiable information.
   2.6 “Ordering Activity Project” means each distinct construction project constrained by a specific scope, budget, and schedule, as specified in a construction project agreement. The Project lifecycle phases for typical construction projects may include initiation, planning, design, demolition, construction, commissioning, and closeout. Procore considers projects in the construction phase to be subject to restriction in number by “project caps” within an Ordering Document that specify how many simultaneous projects may be managed under the terms of a Procore subscription. The construction phase is considered to commence with the bid and award process, and is considered to be complete upon the project owner’s written acknowledgement of substantial completion, or the award of a certificate of occupancy from the local regulatory or governmental authority responsible for determining substantial completion.
   2.7 “Documentation” means the online screen-share demonstration materials, marketing collateral, and other materials in written or electronic form provided to Ordering Activity by Procore in connection with Ordering Activity’s subscription to the Services.
   2.8 “Enhancements” means the following: minor modifications, revisions, and corresponding Documentation with respect to the Services, including the addition of enhancements or improved performance made available by Procore to the Services; however, Enhancements do not include the addition of New Features not originally included as part of the Services described on a particular Ordering Document.
   2.9 “Maintenance Modifications” means bug fixes, patches, modifications, or revisions to the Services that correct errors therein; however Maintenance Modifications do not include New Features not originally included as part of the Services described on a particular Ordering Document.
   2.10 “New Features” means those significant technological or service features and/or tools that Procore develops over time, which are offered to Ordering Activities as additional features for a fee and are distinct from included Enhancements and Maintenance Modifications.
   2.11 “Ordering Document” means the order form document issued by Ordering Activity.
   2.12 “Services” means Procore’s distinct services purchased by Ordering Activity as specified on the Ordering Document.
   2.13 “Site” means app.procore.com and all associated Procore mobile applications.
   2.14 “Software” means Procore’s software programs and any associated user interfaces and related technology that Procore uses to provide the Services, and that Procore makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.
   2.15 “Subscription Fee” means the agreed-upon subscription fee for the Services as stated on the Ordering Document.
   3.1 Subscription Rights and Access. Procore grants Ordering Activity the nonexclusive limited-time subscription and right to use the Services in accordance with this Agreement. Further, Procore agrees that Ordering Activity may access and use, and permit each Authorized User to access and use, the Services for its intended purpose, in accordance with the specifications set forth in any Documentation and subject to the terms of this Agreement and the limits on Construction Volume, Projects, and/or other use restrictions specified on each Ordering Document. Procore shall provide to Ordering Activity the necessary passwords, security protocols and policies, and network links or connections to allow Ordering Activity and its Authorized Users to access the Services. Procore will provide the Services and Software with (a) support for the Services as outlined in Exhibit A, and (b) access to Enhancements and Maintenance Modifications as they become available. Ordering Activity and its Authorized Users are solely responsible for ensuring that they have sufficient and compatible hardware, software, telecommunications equipment, and Internet service necessary for the use of the Site and Services. All other rights not expressly granted in this agreement are reserved by Procore.
   3.2 Site Updates. Procore may change, modify, upgrade, or discontinue any aspect or feature of the Site in whole or in part. Such changes, upgrades, modifications, additions, or deletions will be effective immediately upon notice thereof, which may be made by posting such changes to the Site. In the event Procore modifies or discontinues any content or feature of the Site which results in reduction of functionality or degradation of the Site, Procore shall provide comparable functionality.
   3.3 Limitations. Ordering Activity shall not, and shall not authorize or permit any Authorized User to (a) rent, loan, or re-license rights to access and/or use the Services or Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile, or reverse engineer software included as part of the Services; (c) share identification or password codes with persons other than Authorized Users, or permit Ordering Activity’s account to be accessed by individuals who are not Authorized Users; (d) access, use, or permit a third party to access or use the Services or Software for purposes of competitive analysis, including the development, provision, or use of a competing software or service or for any other purpose that may be to Procore’s detriment or commercial disadvantage; or (e) use the Services in any way not expressly provided for in this Agreement. Ordering Activity shall be responsible for all activities that occur under Ordering Activity’s account and for all actions of Ordering Activity or its Authorized Users and both Ordering Activity and Authorized Users shall use the Services in accordance with this Agreement. Ordering Activity shall notify Procore of any unauthorized use of Ordering Activity’s passwords or account, or any other breach of security that is known or suspected by Ordering Activity. Ordering Activity and its Authorized Users shall abide by all applicable local, state, and national laws and regulations in connection with their use of the Services. Ordering Activity shall be responsible for any breach of this Agreement by its Authorized Users and agrees to enter into agreements with its Authorized Users that contain
terms that impose no less restrictions in all material respects than those imposed on Ordering Activity herein, including, but not limited to, the provisions regarding the use of the Services and protection of Procore’s intellectual property.

3.2 Activity Content. Procore will process Ordering Activity Content as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Ordering Activity represents and warrants that it has all necessary rights in the Ordering Activity Content to grant Procore the right to use, and Ordering Activity hereby grants Procore a non-exclusive, worldwide, royalty-free and fully paid license to use, the Ordering Activity Content as necessary for Procore to provide the Services. All rights in and to the Ordering Activity Content not expressly granted to Procore in this Agreement are reserved by Ordering Activity. Ordering Activity represents and warrants that any Ordering Activity Content hosted by Procore as part of the Services will not (a) infringe or violate the rights of any third party; (b) be deceptive, defamatory, obscene, or unlawful; or (c) contain any viruses, worms, or other malicious computer programming codes intended to damage Procore’s systems or networks. Ordering Activity acknowledges that any use of the Services by Ordering Activity or Authorized Users contrary to or in violation of the representations and warranties of Ordering Activity in this section constitutes unauthorized and improper use of the Services. Ordering Activity shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Ordering Activity Content. The Parties acknowledge that Procore does not and cannot review all Ordering Activity Content and will not be responsible for such content.

3.5 Ordering Activity Data. Procore will process Ordering Activity Data as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Ordering Activity represents and warrants that Ordering Activity shall only provide to Procore the minimum amount of personally identifiable information for each Authorized User to enable the Authorized User to enjoy the benefit of this Agreement. Ordering Activity represents and warrants that Ordering Activity is entitled to transfer relevant Ordering Activity Data to Procore so that Procore may lawfully use, process, and transfer the Ordering Activity Data in accordance with this Agreement on Ordering Activity’s behalf and Ordering Activity shall ensure the same; Ordering Activity shall ensure that the relevant third parties, including data subjects, have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation. Ordering Activity acknowledges that Procore is reliant on Ordering Activity for direction as to the extent to which Procore is entitled to use and process the Ordering Activity Data. Procore shall process the Ordering Activity Data only in accordance with the terms of this Agreement and any written instructions given by Ordering Activity. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be transferred or stored in the United States of America in order to carry out the Services and Procore’s other obligations under this Agreement. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be shared with third parties only as necessary to provide the Services. Procore will not be liable for any claim brought by an Authorized User arising from any action or omission by Procore, to the extent that such action or omission resulted from Ordering Activity’s instructions.

3.6 Ordering Activity Acknowledgement. As of the effective date listed on the Ordering Document, Ordering Activity acknowledges and agrees that an authorized representative of Ordering Activity has evaluated the features and functionality of the Services in a means satisfactory to Ordering Activity and accepts that the Services have been demonstrated shown to have all of the features and functionality that have been represented to Ordering Activity. Ordering Activity acknowledges that its purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any change with respect to the Services ordered by Procore.

3.7 Non-Procore Applications. Procore or third parties may make available third-party products or services ("Non-Procore Applications"). Any use by Ordering Activity and any exchange of data between Ordering Activity and the provider of Non-Procore Applications is solely between Ordering Activity and the applicable provider. Procore does not warrant or support Non-Procore Applications or other non-Procore products or services. If Ordering Activity installs or enables a Non-Procore Application for use with the Services, Ordering Activity hereby grants Procore permission to allow the provider of that Non-Procore Application to access Ordering Activity’s data and content as required for the interoperation of that Non-Procore Application with the Services. Procore is not responsible for any disclosure, modification, or deletion of any of Ordering Activity's data or content resulting from access by a Non-Procore Application. The Services may contain features designed to interoperate with Non-Procore Applications. To use such features, Ordering Activity may be required to obtain access to Non-Procore Applications from their providers, and may be required to grant Procore access to Ordering Activity’s account(s) on the Non-Procore Applications.

3.8 Reserved.
4. Reserved.
5. Reserved.
6. Proprietary Rights. Procore will retain all worldwide rights in the intellectual property in and on the Site, the look and feel of the Site, and all copyrights in and to its content. The Site is copyrighted, trademarked, or otherwise protected, and owned or licensed by Procore. Nothing in this Agreement grants Ordering Activity or any Authorized User an express or implied right to use any Procore intellectual property except as set forth in section 3.1 above. All proprietary rights in the Services, including the Software as well as any aggregate usage statistics, traffic patterns, and other non-personally identifiable data collected by Procore in connection with use of the Services, will be the sole and exclusive property of Procore. Procore retains the royalty-free right to use any suggestions, ideas, feedback, or other recommendations provided by Ordering Activity or Authorized Users relating to the Services. Ordering Activity hereby grants Procore the right to contact Ordering Activity and Authorized Users in connection with their use of the Services unless otherwise stated on the Ordering Document.

7. Warranties and Liability.

7.1 Limited Warranty. Each Party warrants that it has all necessary authority to enter into and perform its obligations under this Agreement. Procore represents and warrants that (1) the Services will perform in accordance with the Documentation under normal circumstances, and (2) the Services provided hereunder will be performed in a professional manner in accordance with prevailing industry Standards. Provided that Ordering Activity notifies Procore of any breach of the foregoing warranty during the Term, Procore shall, as Ordering Activity’s sole and exclusive remedy, provide the support services set forth in Exhibit A to this Agreement. The Services may contain links to sites on the Internet that are owned and operated by third parties. Ordering Activity acknowledges and agrees that Procore is not responsible for the availability of, or the content located on or through, any such external site.

7.2 Disclaimer. Except as specifically provided in this Agreement, Procore disclaims all other warranties and conditions, express or implied. Procore expressly disclaims any implied warranties, including the warranties of merchantability, fitness for a particular purpose, title and non-infringement. Procore does not warrant that the operation of the Services will be uninterrupted or error-free.
EXHIBIT A
SUPPORT AND MAINTENANCE

1. Service-Level Agreement.
Procore has a service-level objective for the Services of 99.9% availability, 24 hours a day, 7 days a week, 365 days a year. Downtime does not include (i) problems caused by factors outside of Procore's reasonable control, and (ii) unavailability of the Services during scheduled maintenance. Scheduled maintenance is communicated to users through “in app” notifications, with a minimum of a 24 hour notice of the scheduled maintenance. During the Term of this Agreement, the Services will be operational and available to Ordering Activity at least 99.9% of the time in any calendar month (the “Procore SLA”). If Procore does not meet the Procore SLA, and if Ordering Activity meets its obligations under this Procore SLA, Ordering Activity will be eligible to receive the Service Credits described below. This Procore SLA states Ordering Activity's sole and exclusive remedy for any failure by Procore to provide the Service.
Definitions. The following definitions shall apply to the Procore SLA.
   a. "Downtime" means the inability to utilize the Services in the normal course of business due to a failure within the Service and not resulting from (i) factors outside of Procore's reasonable control, (ii) Ordering Activity's systems or equipment, or (iii) third party products, services or equipment not supplied by Procore.
   b. "Downtime Period" means a period of ten consecutive minutes of Downtime. Intermittent Downtime for a period of less than ten minutes will not be counted towards any Downtime Periods.
   c. "Monthly Uptime Percentage” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.
   d. "Scheduled Downtime” means those times where Procore notifies Ordering Activity of periods of Downtime at least twenty-four hours prior to the commencement of such Downtime. There will be no more than six hours of Scheduled Downtime per calendar month. Scheduled Downtime is not considered Downtime for purposes of this Procore SLA, and will not be counted towards any Downtime Periods.

<table>
<thead>
<tr>
<th>Monthly Uptime Percentage</th>
<th>Days of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.9%</td>
<td>3</td>
</tr>
<tr>
<td>≥ 99.9% - ≥ 95.0%</td>
<td>7</td>
</tr>
<tr>
<td>&gt; 95.0%</td>
<td>15</td>
</tr>
</tbody>
</table>

Service Credits. Service Credit shall be applied against the Service cost. If service is discontinued for any reason, the Service Credit shall be in the form of a rebate at the end of service. Service Credit shall be computed by dividing the number of Days of Service credited by the number 365 and multiplied by the Annual Service GSA Fee set forth in the applicable Ordering Document. In order to receive any of the Service Credits described above, Ordering Activity must notify Procore, within thirty days from the end of the month during which Ordering Activity becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Ordering Activity's right to receive a Service Credit.

2. Support.
During the Term, Ordering Activity and Authorized Users will have access to technical support via telephone, online chat, email, or self-paced online tutorials. Support hours will be 5:00 a.m. to 10:00 p.m. Pacific Time ("PT") Monday through Friday, and 10:00 a.m. to 6:00 p.m. PT Saturday and Sunday, excluding holidays. Support does not include training sessions on the features and functionality of the Services (implementation) or training in computer skills considered prerequisite to an individual's ability to use personal computers, the Internet/World Wide Web, and online software.
Upon Procore’s receipt of a support request, Procore will use commercially reasonable efforts to answer questions and provide standard error corrections to known problems. In the event of any problems or errors involving the Services that Procore cannot immediately resolve, Procore will begin working on a resolution to the problem and will work diligently and in a commercially reasonable manner on the problem until it is resolved.

3. Data Backup and Return.
During the Term, Procore shall make commercially reasonable efforts to protect the security of Ordering Activity's data, and shall complete daily data backups of Ordering Activity’s data to an archive format that will be kept physically separate from the Procore database and web server hardware. The Services do not replace the need for Ordering Activity to maintain regular data backups or redundant data archives.

4.1 Unplanned Outages. If a system failure should occur that creates an outage of the Services, Procore will utilize all reasonable means to end the outage as soon as possible. Outages due to the Internet, hosting providers, and/or Ordering Activity or Authorized User systems are outside Procore's control and, in such event, Procore will assist the Ordering Activity or Authorized User in the diagnosis but may not be able to resolve the problem.

4.2 Preventative Maintenance. From time to time, Procore or its hosting providers will perform preventative maintenance, such as updating servers and routers with security patches, and software upgrades. Procore will provide notice prior to any interruption in the Services and will keep any resulting downtime reasonable. Procore will use all reasonable efforts to perform such maintenance at hours convenient for the Ordering Activity and Authorized Users.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

3. Scope. This Rider and the attached Project Remedies, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

4. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Governmental Accounting Standards Board (GASB) Accounting Standards Update No. 2013-01, the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3737 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultants orders under the Schedule Contract, including but not limited to the following provisions:

w) Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

e) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
PROJECT REMEDIES, INC.

PROJECT REMEDIES, INC. LICENSE, WARRANTY AND SUPPORT TERMS

ss) Section 1: GRANT OF LICENSE

1.1 Contractor through Project Remedies, Inc. ("PRI") hereby grants to Ordering Activity ("Client"), and Client hereby accepts, a nonexclusive, nontransferable, perpetual license to use the software program(s) in accordance with its associated documentation (collectively, the "Software"). The Software may only be used on one or more production servers, for which a valid license key has been issued, and on one or more test / development servers, for which a valid license key has been issued, in accordance with the terms set forth below. Client may however assign this agreement to a successor in interest through merger or acquisition, to a parent or subsidiary, or to a purchaser of all or substantially all of the assets of the division that is to use the Software. Any assignment of Client’s interest, other than as described herein is prohibited without prior written consent of PRI. For purposes of this Attachment A only, the definition of “Client” shall include Client affiliate organizations, which shall agree to use the software program(s) pursuant to the terms and conditions of this Attachment A.

1.2 Client is authorized to use the Software for Client’s own internal business purposes. Client will not copy or reproduce the Software, except for backup and archival purposes.

1.3 Client shall not, directly or indirectly, nor shall Client permit others to: copy, duplicate or furnish to others any physical, magnetic or optical version of the Software provided by PRI; remove any copyright or other notice contained or included in the Software or any material provided by PRI; or change, modify, reverse engineer, decompile, disassemble or create derivative works from the Software or any other material provided by PRI.

1.4 Reserved.

Section 2: RESERVED

Section 3: DELIVERY

3.1 Contractor through PRI will deliver the Software to Client upon receipt of Client’s purchase order. PRI software will be installed on Client’s Remedy test / development server by PRI consultants working with Client’s Remedy Action Request System administrator. The software will be tested by Client personnel to insure that the Software performs substantially in accordance with the functionality documented in the APM Getting Started Guide, the APM Time Tracking Quick Reference Guide and the APM Administrator Notes, which are incorporated herein by reference.

3.2 Reserved.

 tt) Section 4: SYSTEM MAINTENANCE AND SUPPORT

4.1 During the term of the purchase order, Contractor through PRI will provide the following maintenance services at the GSA Schedule fees noted on the Quotation.

1. Any known problem solutions relating to the Software as such solutions become known to PRI.

2. Timely response to Client’s requests for corrections of program coding errors.

3. Telephone support in the form of counsel and advice on the use and maintenance of the Licensed Material during PRI’s normal business hours.

4. All releases, modifications, refinements and enhancements which PRI elects to incorporate into and make part of the Software and does not separately or additionally price or market.

4.2 Client understands and agrees that all solutions, corrections, modifications, refinements, enhancements and new releases supplied by PRI are to be implemented within the normal production schedule of Client. Client further recognizes that its failure to so implement such solutions, corrections, modifications, enhancements and new releases may render the Software unusable or nonconforming to system documentation and Client agrees to assume all risks arising therefrom. Any modification made to the Software by Client’s personnel other than those authorized by PRI shall invalidate PRI’s obligations under this section.

4.3 Reserved.

Section 5: WARRANTIES

5.1 Contractor through PRI warrants that, so long as Client uses the Software properly and in accordance with its intended use, the Software will perform substantially in accordance with the APM Getting Started Guide, the APM Time Tracking Quick Reference Guide and the APM Administrator Notes, which are incorporated herein by reference, for a period of ninety (90) days from the date all software is successfully installed, and the media on which the Software is distributed and the associated documentation will be free of physical defect for a period of ninety (90) days from the date of delivery. PRI’s entire liability and your exclusive remedy shall be, at Project Remedies Inc.’s option, either (a) product replacement, or (b) refund of the license fee.
5.2 Contractor through PRI warrants the Software is free from computer viruses introduced as a result of the negligence or intentional acts of PRI, its agents or employees and that PRI, its agents or employees will not embed any device in the Software or take any action to disrupt or terminate its operation of such Software.

5.3 Contractor through PRI further warrants that it is the sole owner of, or that it has the right to license the use of, the Software being used for Client’s purposes, and that it has the right to provide Client with a nonexclusive license for the use of the Software.

5.4 The Software (i) is designed to be used prior to, during, and after the calendar year 2000 AD; (ii) will operate during each such time period without any error or interruption relating to, or the product of, data or input which includes an indication of or reference to a date (“Date Data”) which represents or references different centuries or more than one century; (iii) will, under normal use and service, record, store, process and present calendar dates falling on or after September 9, 1999, January 1, 2000 and February 29, 2000, in the same manner, and with the same functionality, data integrity and performance, as the Software records, stores, processes and presents calendar dates on or before September 8, 1999, December 1, 1999 and February 29, 1996; and (iv) recognizes the year 2000 as a leap year. PRI shall cooperate with any year 2000 problem identification and/or testing procedure carried out by Client and/or securities industry groups, without charge to Client. Notwithstanding anything else in this or any other agreement, PRI consents to Client releasing information regarding any such procedure or the results thereof.

5.5 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED MATERIALS OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 6: RESERVED
Section 7: RESERVED

Section 8: TITLE

PRI shall retain title to the Software including all versions and embodiments thereof and all additions and modifications thereto. PRI does not by this Attachment A convey any proprietary interest therein to Client. Client agrees that the Software, including all changes made thereto by anyone and any materials related thereto that are supplied by or developed by PRI, is the valuable property of PRI. Client further agrees to treat the Software and related materials accordingly and agrees diligently to preclude all access to the Software except as provided herein, to keep the same confidential, by using the same care and discretion that Client uses with respect to its own confidential property.

Section 9: RESERVED

Section 10: RESERVED

Section 11 U.S. GOVERNMENT RESTRICTED RIGHTS

The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of the DFARS 52.227-7013 or subparagraphs (c)(1) and (2) of the Rights in Data at 48 CFR 52.227-14 or any successor rules of regulation. The manufacturer of the Software is Project Remedies Inc., 2034 Palisades Dr., Suite W, Pacific Palisades, CA 90272 USA.

Section 12 EXPORT

The United States Government strictly controls the exportation of technical materials. Client agrees that Client will not directly, or indirectly, without prior written consent, if required, of the Office of Export Licensing of the U.S. Department of Commerce, Washington DC, 20230, export or transmit the Software to Afghanistan, the People’s Republic of China or to any group Q, S, W, Y, or Z country (as specified in Supplement No. 1 to Section 770 of the U.S. Export Administration Regulations or a successor thereto) issued by the U.S. Department of Commerce or to any country to which such transmission is restricted by applicable regulations or statutes.

Section 13 RESERVED
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. Scope. This Rider and the attached Proofpoint, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800:2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable in default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). Any mediation or other forms of alternate dispute resolution are hereby superseded. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**PROOFPOINT, INC.**

**PROOFPOINT, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

The following terms apply to each GSA Customer (“Customer”) license of Proofpoint Products from Vinitech Inc, (“Reseller”) under the GSA Schedule Contract, “License”:

“Proofpoint Products” means the appliance, service or software listed in the GSA Schedule Price List by Vinitech Inc., on June 15, 2014, and licensed by Customer from Vinitech pursuant to a GSA Customer Purchase Order (“Order”).

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“Documentation” means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or License of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer’s purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product. The Documentation does not contain additional legal terms and conditions, but serves to provide the Customer with user manuals and specifications applicable to the Proofpoint Product.

“Mailbox” means a separate account on Customer’s e-mail server for sending or receiving messages or data within Customer’s e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer’s e-mail server for the receipt of messages or data within Customer’s e-mail system or network. For Proofpoint Product Social Archive and/or Governance, “Mailbox” hereunder shall be deleted and replaced with “Named User”.

License. Customer is granted a limited term, non-sublicensable, non-transferable, and nonexclusive license to access or use the Proofpoint Products licensed by Customer from Reseller during the applicable subscription term, for its intended purposes, solely for Customer’s internal business purposes and not for further use by or disclosure to third parties and in accordance with the Proofpoint Products Documentation and any applicable federal laws or regulations. Customer’s right to access or use Proofpoint Products is limited to those parameters set forth in the applicable GSA Customer Purchase Order (“Order”) provided to Proofpoint including, but not limited to the maximum number of Mailboxes (“Licensed Mailbox Count”) (and storage if applicable) for each module and the type of deployment (i.e., SaaS or appliance).

License Restrictions. Customer will not and will not allow any third party to:

a) copy, modify, or create derivative works of the Proofpoint Products or Proofpoint Products Documentation;

b) reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Proofpoint Products except and only to the extent permitted by applicable federal law notwithstanding this limitation, provided however, that in any case, Customer shall notify Proofpoint in writing prior to any such action and give Proofpoint reasonable time to adequately understand and meet the requested need without such action being taken by Customer;

c) remove, alter, cover or obscure any notice or mark that appears on the Proofpoint Products or on any copies or media;

d) sublicense, distribute, disclose, rent, lease or transfer to any third party any Proofpoint Products;

e) export any Proofpoint Products in violation of U.S. laws and regulations;

f) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein;

g) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface;

h) use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer’s organization without Proofpoint's prior written consent; (b) infringement or misappropriation of the intellectual property rights of any third party or any rights of publicity (e.g. a person's image, identity, and likeness) or privacy; (c) violation of any federal law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, antidiscrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Proofpoint Product and/or Documentation or any portion thereof; or

i) upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, contains child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality (e.g. image, identity, likeness), or unauthorized linking or framing.

Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk, unsolicited emails or in any other manner not prescribed by the applicable Proofpoint Products Documentation.

Customer Responsibilities. Customer is responsible for (i) all activities conducted under its user logins; (ii) obtaining and maintaining any Customer equipment and any ancillary services needed to connect to, access or otherwise use the Proofpoint Products and ensuring that the Customer equipment and any ancillary services are (a) compatible with the Proofpoint Products and (b) comply with all configuration requirements set forth in the applicable Proofpoint Product Documentation; and (iii) complying with all federal laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to, obtaining any required consents and/or acknowledgements from its employees, agents, consultants and/or independent contractors (collectively referred to as “personnel,” hereinafter) and service providers (if applicable) in managing its electronic messaging system and/or social media systems (as applicable). Customer shall be solely responsible for any damage or loss to a third party resulting from the Customer's data, or where Customer’s use of the Proofpoint Products is in violation of federal law, or of this Agreement, or infringe the intellectual property rights of, or has otherwise harmed, such third party.

Customer shall (i) take all necessary measures to ensure that its users use Proofpoint Products in accordance with the terms and conditions of this Agreement; and (ii) in the case of any purchase of Proofpoint Secure Share, users of the Proofpoint Product will need to register to use the Secure Share. For the purposes of Proofpoint’s compliance with its obligations under this Agreement, Customer consents to and authorizes Proofpoint (and its authorized subcontractors, subject to approval by the Contracting Officer) to retain, store and transmit any Customer information and data, subject to Government security requirements that Customer discloses to Proofpoint and pursuant to the normal functioning of Proofpoint Products. Customer information and data includes, but is not limited to (i) all configuration, rules and policies executed at Customer’s direction; (ii) any document management or retention protocols that would delete, track, transmit or route documents or other data; (iii) any requests by Customer or required hereunder for log, access, support-related or other transmissions under this Agreement.
If Customer has elected to route outbound email through the Proofpoint Product via the Software as a Service deployment, such as Proofpoint Security Services or MTA, Customer is responsible for maintaining the outbound email filtering applicable Proofpoint Product configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher.

Support and Service Levels. For Customer who purchase Support Services, Proofpoint shall provide Support Services in accordance with Proofpoint's standard support terms which are currently described on Exhibit A.

Warranty Disclaimer. Proofpoint disclaims (and Proofpoint is also required under its contracts with its suppliers and licensors to state that such suppliers and licensors also disclaim) any and all warranties, whether express, implied, or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, including without limitation regulatory compliance, performance, accuracy, reliability, and noninfringement. Proofpoint does not warrant that the accuracy of the Proofpoint Products will meet Customer's requirements or that no email will be lost or that the Proofpoint Products will not give false positive or false negative results or that all spam and viruses will be eliminated or that legitimate messages will not be occasionally quarantined as spam. Proofpoint does not warrant the operation of the Proofpoint Products will be uninterrupted or error-free. Proofpoint does not warrant the accuracy of management of any document, or that no document will be lost. This disclaimer of warranty constitutes an essential part of this Agreement.

Disclaimer of Liability. All direct, consequential, incidental, special, punitive, exemplary, and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Proofpoint (and Proofpoint is also required under its contracts with its suppliers and licensors to state in this Agreement that such suppliers and licensors also disclaim such damages herein): the foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Proofpoint's negligence; (2) for fraud; (3) for express remedies requiring the specific type of relief under the law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

Proofpoint Contract Rights. Customer agrees that Proofpoint is a party to this Agreement with all rights to enforce such provisions to this Agreement, including but not limited to the right to monitor and reset harmful outbound email configuration settings impacting the Proofpoint platform.

Law. This Agreement shall be governed by the federal law of the United States. The Uniform Computer Information Transaction Act shall not apply to this Agreement.

Force Majeure. Pursuant to FAR 52.212-4(f), either party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers, and other acts beyond a party's reasonable control or possession including acts, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees) or third party service disruptions involving hardware, software or power systems and denial of service attacks.

Open Source Software. Proofpoint Appliance/Software for Customer On-Site Deployment. Open Source Software may be a component of the Software provided to Customer for on-site deployment. Proofpoint is required by Open Source Software requirements to inform the end user of certain facts, including the following:

"Open Source Software" means various open source software, including GPL software which is software licensed under the GNU General Public License as published by the Free Software Foundation, and components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. Customer may obtain information, (including, if applicable, the source code) regarding the inclusion of Open Source Software in the Software by sending a request, with Customer's name and address to Proofpoint at the address specified in the Order. Customer may redistribute and/or modify the GPL software under the terms of the GPL. A copy of the GPL is included on the media on which Customer receives the Software or included in the files if the Software is electronically downloaded by Customer. This offer to obtain a copy of the source files for GPL software is valid for three (3) years from the date Customer acquired the Appliance Software.

Proofpoint Product - Email Archive. Proofpoint has third party technology included in the Proofpoint Product Email Archiving Service for the purpose of extracting text from email attachments. Proofpoint or its reseller or distributor will negotiate third party rights, if any, with the GSA Customer at the time it enters into an Order for the Proofpoint Product Email Archiving Service.

Termination. When the end user is an instrumentality of the U.S., recourse against the United
States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Proofpoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Within thirty (30) days after expiration or termination of the License to use the Proofpoint Product, Customer shall: (i) certify in writing to Proofpoint that all copies of the Software, Software Updates, and Documentation in any form, including partial copies or extracts thereof, have been destroyed or returned to Proofpoint, and (ii) retrieve or dispose of Customer data from or within the Proofpoint Products and/or systems. Upon 30 days of termination of the License to use the Proofpoint Product, Customer data in the Proofpoint Product and/or systems may be rendered illegible, deleted or written over, including any back-up Customer data.

Exhibit A

SUPPORT SERVICES PROGRAM FOR PROOFPOINT CUSTOMERS

Overview: The support services described herein are provided by Proofpoint to each GSA Customer (“Customer”) pursuant to the terms and conditions of the applicable license agreement (“Agreement”) between each Customer and Proofpoint or between a Customer and an authorized Proofpoint partner. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. Subject to customer paying the applicable support related fees, Proofpoint will provide the support described herein.

1. Bronze Support services consist of the following:

1.1 Error Corrections. Proofpoint shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Customer in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Customer.

1.2 Software and Documentation Updates. Proofpoint shall provide to Customer one (1) electronic copy of all updated revisions to the Documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Software (collectively, “Updates”). Updates do not include products or options that are designated by Proofpoint as new products or options which are subject to the execution of a new or modified Order. Software releases are supported for the current and prior release that are designated by a change to the right of the decimal (e.g. 1.1 to 1.2). Prior to discontinuing support services for any Software product line, Proofpoint shall provide at least six (6) months advance notice on the customer support portal.

1.3 Support Requests and Named Support Contacts. Technical support is available during the technical support hours for the primary support center specified in the applicable Order. Technical support hours for the Americas are Monday through Friday, 12:00 UTC to 03:00 UTC the following day (e.g. 07:00am to 10:00pm EST during standard time and excluding Proofpoint holidays). Customer may initiate electronic Support requests through Proofpoint’s web-based call submission and tracking system (“CTS”) at any time. Support requests submitted via CTS will be addressed by Proofpoint during the Support hours listed above. Customer will promptly identify two internal resources who are knowledgeable about Customer’s operating environment and operation of the Proofpoint Products (collectively, “Named Support Contacts”). Named Support Contacts will serve as primary contacts between Customer and Proofpoint and are the only persons authorized to interact with Proofpoint Technical Support, including accessing CTS to submit and track cases. All Support requests will be tracked in CTS and Customer can view the status of Customer’s cases on CTS at any time.

1.4 Platinum Support. In addition to the Bronze support services defined above, Customer shall receive (i) two additional Named Support Contacts (for a total of four) and Proofpoint shall provide assistance for Priority I errors, as reasonably determined by Proofpoint,

GSA CUSTOMER:

| Individual Signing:       | [print name] |
| Signature:               |             |
| Title:                   |             |
| Signing Date:            |             |

PROOFPOINT, INC.:

| Individual Signing:       | [print name] |
| Signature:               |             |
| Title:                   |             |
| Signing Date:            |             |

PROOFPOINT, INC. ADDRESS:

892 Ross Drive
Sunnyvale, CA 94089 USA
Attn: General Counsel

24 hours per day x 7 days per week, 365 days per year; (24x4x365) and (ii) a dedicated phone line for submitting cases. Handling of non-Priority I errors will take place during the support hours specified in Section 1.3 above.
2. **Priority Levels of Errors and Responses**

In the performance of Support services, Proofpoint will apply the following priority ratings.

**2.1 Priority I Errors.**

A “Priority I Error” means a Software program error which both (i) prevents some critical function or process from substantially meeting the Documentation and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some major function of the Software or Appliance is disabled. Priority I Errors shall receive an initial response within one (1) hour (during standard Support hours referenced above), of the case being submitted to Proofpoint. In addressing a Priority I Error, Proofpoint shall use all reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Proofpoint’s efforts to resolve a Priority I Error will include the following: (1) assigning one or more senior Proofpoint engineers on a dedicated basis to develop a suitable workaround, patch, or other temporary correction; (2) notifying senior Proofpoint management that such P1 Error has been reported; (3) providing Customer with periodic reports on the status of corrections; and (4) providing a final solution to Customer as soon as it is available.

**2.2 Priority II Errors.**

A “Priority II Error” means a Software program error which both (i) degrades some critical function or process from substantially meeting the Documentation and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the Software or Appliance is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within four (4) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

**2.3 Priority III Errors. Description:** A “Priority III Error” means a Software program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the Software or Appliance. Priority III Errors shall receive an initial response within eight (8) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

**2.4 Priority IV Errors.**

A “Priority IV Error” means a Software program error which prevents some function or process from substantially meeting the Documentation, but does not significantly degrade the overall performance of the Software or Appliance. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to include a workaround, patch, or other temporary correction in the next Software update.

3 **Customer’s Cooperation.**

Proofpoint’s obligation to provide Support services is conditioned upon the following: (i) Customer’s reasonable effort to resolve the problem after communication with Proofpoint; (ii) Customer’s provision to Proofpoint of sufficient information and resources to correct the problem, including, subject to Government security requirements, remote access as further discussed in these policies, (iii) Customer’s prompt installation of all Software maintenance releases, bug fixes and/or work-arounds supplied by Proofpoint, and (iv) Customer’s procurement, installation and maintenance of all hardware necessary to operate the Software. As related to Priority I Errors, Customer shall provide continuous access to appropriate Customer personnel and the Appliance (if applicable) during Proofpoint’s response related to the Priority I Error or Proofpoint shall be permitted to change the Priority of the error. During the term of the Support services, for purposes relating to providing Support to Customer and subject to Government security requirements, Proofpoint may obtain information regarding Customer’s e-mail communications. Customer agrees that Proofpoint may use any statistical data generated relating to Customer’s e-mail subject to Government security requirements. Notwithstanding the foregoing, Proofpoint shall not disclose the source and content of any such e-mail.

4. **Reproducing Problems; Remote Access.**

Support services assistance is limited to Software on platforms that are fully supported, running unaltered on the proper hardware configuration. For a reported error, Proofpoint will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. Proofpoint’s obligation to provide the Support services described herein, including without limitation meeting the response times set forth in Section 2 above, is subject to Customer providing shell or Web-based remote access to Customer’s computer system(s) and network subject to Government security requirements. Any such remote access by Proofpoint shall be subject to Proofpoint’s compliance with Customer’s security and anti-virus procedures and the confidentiality requirements set forth in the license agreement between Proofpoint and Customer. Any delay occasioned by Customer’s failure to provide the foregoing remote access shall extend the response time periods set forth in Section 2 accordingly. Proofpoint will notify Customer of any additional work required by the GSA Customer’s failure to provide access and will afford the GSA Customer an opportunity to execute a new or modified Order. If Customer fails to provide remote access to its computer system(s) and network and Proofpoint and Proofpoint and Customer cannot agree on a mutually satisfactory alternative method of reproducing the problem, Proofpoint shall not be obligated to resolve the problem.

5. **Support Services Conditions.**
5.1 **Support Issues Not Attributable to Proofpoint.** Proofpoint is not obligated to provide Support services for problems related to: (i) unauthorized modifications and/or alterations of the Software, (ii) improper installation of the Software by non-Proofpoint personnel, use of the Software on a platform or hardware configuration other than those specified in the Documentation or in manner not specified in the Documentation, or (iii) problems caused by the Customer’s negligence, hardware malfunction, or third-party software. Proofpoint may offer Support services for problems caused by any of the above pursuant to the execution of a new or modified Order.

5.2 **Exclusions from Support services.**

The following items are excluded from Support services:

(a) In-depth training. If a Support request is deemed to be training in nature, and will require an extended amount of time, Customer will be referred to Proofpoint’s training or consulting departments.

(b) Assistance in the customization of an application. Support services do not include providing assistance in developing, debugging, testing or any other application or customization.

(c) Information and assistance on third-party products. Issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications (except an Appliance) are not provided under Proofpoint Support services.

(d) Assistance in the identification of defects in user environment. If Proofpoint concludes that a problem being reported by a Customer is due to defects in Customer’s environment, Proofpoint will notify the Customer. Additional support by Proofpoint personnel to remedy performance issues due to the user environment are categorized as consulting services, which are provided pursuant to the execution of a new or modified Order.

(e) Installation. Support Services provided herein do not include the use of Proofpoint Support services resources to perform installation of updates or Customer-specific fixes. If Customer wishes to have Proofpoint perform services related to any of the above items, such services will be performed pursuant to a mutually executed Order and a SOW, if required by the Contracting Officer.

6. **Description of Appliance Support Services.**

6.1 **Services.**

For as long as the Appliance purchased by Customer is under Proofpoint’s Appliance warranty Customer shall contact Proofpoint for any and all maintenance and support related to the Appliance. If support for the Appliance purchased by Customer includes on-site support, Proofpoint shall provide or cause to be provided 8-hour response service during the support hours specified in Section 1.3. A technician will arrive on-site subject to Government security requirements, depending on Customer’s location and the availability of necessary parts, as soon as practicable (within the business hours specified in Section 1.3) after problem determination. Optional 24x7 service is available subject to Section 1.4.

6.2 **Customer Obligations.**

Customer must also install remedial replacement parts, patches, software updates or subsequent releases as directed by Proofpoint in order to keep Customer’s Appliance eligible for Support services. Customer agrees to give Proofpoint at least thirty (30) days written notice prior to relocating an Appliance. It is Customer’s responsibility to back up the data on Customer’s system, and to provide adequate security for Customer’s system. Proofpoint shall not be responsible for loss of or damage to data or loss of use of any of Customer’s computer or network systems. Subject to Government security requirements, Customer agrees to provide the personnel of Proofpoint or its designee with sufficient, free, and safe access to Customer’s facilities necessary for Proofpoint to fulfill its obligations.

6.3 **Exclusions.**

Appliance Support services do not cover parts such as batteries, frames, and covers or service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer, removal or alteration of equipment or parts identification labels, or failure caused by a product for which Proofpoint is not responsible.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Prosoft Systems ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS (contract number GS-35F-0511T) (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
1. SCOPE OF LICENSE. The Software Product is licensed, not sold. This Agreement only gives Ordering Activity some rights to use the Software Product only as expressly permitted in this Agreement. In doing so, Ordering Activity must comply with the following:

- work around any technical limitations in the Software Product;
- reverse engineer, decompile or disassemble the Software Product, except and only to the extent that applicable law expressly permits, despite this limitation;
- remove, minimize, block or modify any notices of Prosoft or its Affiliates or suppliers in the Software Product;
- use the Software Product in any way that is against the law.

2. Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

3. Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

4. Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.

5. Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

6. Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

7. Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

8. Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

9. Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

10. Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

11. Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
• share, publish or lend the Software Product, or provide the Software Product as a stand-alone hosted as solution for others to use, or transfer the Software Product or this Agreement to any third party; or

1.02 License Types:
The scope and term of Ordering Activity’s license is limited to the exact license type listed in the Ordering Activity’s license certificate, order form, or other documentation provided upon purchase of Software Product.

1.03 CRM Licensing Requirements
Access to Microsoft Dynamics CRM Organization(s) via a Software Product does not remove or substitute baseline Microsoft Dynamics CRM licensing requirements.

1.04 Reserved.

2 SUPPORT SERVICES
3.01 Prosoft may, in its sole discretion, provide Ordering Activity with support services related to the Software Product (“Support Services”), as set forth in the applicable ordering document. Any supplemental software code provided as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Agreement. With respect to technical information Ordering Activity provides to Prosoft as part of the Support Services, Prosoft may use such information for its business purposes, including for product support and development. Prosoft will not utilize such technical information in a form that identifies Ordering Activity. Prosoft will not utilize such information in a manner that discloses Ordering Activity’s confidential information to any third party.

3 UPGRADES
4.01 Software Products labeled as upgrades will be available to Ordering Activity upon the purchase of Prosoft annual software maintenance offering as set forth in the applicable ordering document. A Software Product labeled as an upgrade replaces and/or supplements the product that formed the basis for Ordering Activity’s eligibility for the upgrade. Any such upgrade shall be considered part of the Software Product subject to the then-current terms and conditions of this Agreement.

4 RESERVED

5 INTELLECTUAL PROPERTY
6.01 Software Products and other deliverables are protected by copyright and other intellectual property rights laws and international treaties. Prosoft (1) does not transfer any ownership rights in any Software Products and (2) reserves all rights not expressly granted to Ordering Activity under this Agreement.

5 RESERVED

6 WARRANTY & REMEDIES
7.01 Prosoft warrants that the Software Product will perform substantially as described in the applicable Software Product documentation for ninety (90) days from the date it is delivered to Ordering Activity. If it does not and Ordering Activity notifies Prosoft within the warranty term, then Prosoft will, at its option and sole discretion, (1) repair or replace the Software Product or (2) return the price Ordering Activity paid for the Software Product license, and Ordering Activity must uninstall and destroy all copies of the Software Product in its possession.

7.02 The remedies above are Ordering Activity’s remedies for breach of the warranties in this section. Ordering Activity waives any breach of warranty claims not made during the warranty period.

7.03 Exclusions. The warranties in this Agreement do not apply to problems caused by accident, abuse or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, evaluation, pre-release or beta products, or to components of Software Product that Ordering Activity is permitted to redistribute.

7.04 Disclaimer. Except for the limited warranties above, Prosoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

7.05 Ordering Activity represents and warrants that it has the legal right and power to enter into this Agreement and that it will not use the Software Product in a way or for any purpose that infringes or misappropriates any third party’s intellectual property or personal rights.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Pulse Secure ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable Remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer and any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

f) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PULSE SECURE

PULSE SECURE LICENSE, WARRANTY AND SUPPORT TERMS

PULSE SECURE SOFTWARE END USER LICENSE AGREEMENT
LAST REVISED: NOVEMBER 17, 2015

PLEASE CAREFULLY READ THIS END USER LICENSE AGREEMENT ("AGREEMENT") BEFORE DOWNLOADING, INSTALLING, OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU ACQUIRED THE SOFTWARE (EITHER STAND-ALONE OR AS PART OF PULSE SECURE HARDWARE) AND YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, THEN DO NOT INSTALL OR USE THE SOFTWARE AND CONTACT PULSE SECURE WITHIN 30 DAYS OF THE PURCHASE REGARDING THESE TERMS OR A REFUND.

IF YOU AND PULSE SECURE HAVE SIGNED A SEPARATE WRITTEN AGREEMENT COVERING YOUR RIGHTS AND DUTIES WITH RESPECT TO THE SOFTWARE, THEN THAT WRITTEN AGREEMENT TAKES PRECEDENCE OVER ANY CONFlicting TERMS OF THIS AGREEMENT.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTERPRISE’S END USERS, IT IS YOUR RESPONSIBILITY TO COMMUNICATE THE INFORMATION IN THIS AGREEMENT TO THE ENTERPRISE END USERS AND ENSURE COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN.

BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU UNDERSTAND THIS AGREEMENT AND ACCEPT ALL OF ITS TERMS. IF YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THE TERMS OF THIS AGREEMENT.

This Agreement governs Your rights and duties with respect to the Software. Capitalized terms used in this Agreement are defined in Section 28 (Definitions).

1. License Grant.
a. When You purchase or rightfully receive a license to a Software product, Pulse Secure grants You a revocable, non-exclusive, non-transferrable right to install and use that Software for the term stated in Your Proof of Entitlement.

b. Subject to the terms and conditions set forth herein, as long as Your use of the Software does not exceed the scope of the License Metric and quantity of License Metric Units that You purchased, You may install and use the Software on any device that supports it (and You may move the Software from one device to another). Notwithstanding the foregoing, the operating system software (and any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates, may ONLY be installed and used on another Pulse Secure Platform that You have purchased or leased from Pulse Secure or an Approved Source for Your own use and not for resale.

2. Licensing Model(s)
Software offered by Pulse Secure employs trust-based or programmatic license enforcement. Where applicable, it is Your responsibility to both monitor Your usage level, and purchase sufficient License Metric Units to meet Your Software usage.

3. License Name
Each Software product is identified by a unique name. This name, when combined with a Version number corresponds to a specific base set of product features and functionality identified for that Version of the Software in the Documentation.

4. Term of License
a. Subscription/Term-based License. If Your license is a Subscription or a Term-based license, then the term of the Subscription shall be twelve (12) months from the Start Date, unless Your Proof of Entitlement states otherwise. You may, however, renew or reinstate Your Subscription or renew Your Term-based license, subject to the terms of the applicable SDD. Renewals and/or reinstatements are subject to the terms of Pulse Secure Policies at the time of the renewal and/or reinstatement.

b. Special Purpose License. If Your license is a Special Purpose License (see Section 6, below), then its term shall be as stated in Your Proof of Entitlement. If You have no Proof of Entitlement or if Your Proof of Entitlement fails to state a license term, then the term of Your Special Purpose License shall be thirty (30) days from date that You first received the Software, whether via download or otherwise.

c. Perpetual License. If You have a valid Proof of Entitlement that clearly states that Your license is "Perpetual," then, except as stated below, Your license is perpetual, subject only to termination for nonpayment of license fees or other breach of this Agreement. An otherwise perpetual license to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates nonetheless terminates if and when You sell or otherwise transfer the Pulse Secure Platform on which You use it, or when Your lease to that Pulse Secure Platform terminates.

5. License Metrics
License Metrics include the following:
a. Managed Users - the number of individuals to which You and Your authorized users grant access for one or more services furnished, managed, or provisioned by any instance of the Software. A Managed User who accesses such services through multiple devices is nonetheless counted as a single Managed User.

b. Concurrent Sessions – the number of devices to which You and Your authorized users grant access for one or more services concurrently furnished, managed, or provisioned by any instance of the Software.

c. Other Forms of License. Other License Metrics may be defined for specific Software products.

6. Special Purpose Licenses
Special Purpose Licenses are limited, short-term licenses that may not be used for any production or commercial application or similar use.

a. Demonstration Use/NFR-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Demonstration Use", "Not for Resale" or with words of like meaning, AND if You are a Pulse Secure-authorized distributor or reseller, then for the license term (see Section 4, above) You may use the Software, but only to demonstrate features and performance of the Software to prospective buyers, and only while You remain a Pulse Secure-authorized distributor or reseller. The Software provided under this license may not be resold. Maintenance Services must be purchased along with the Demonstration Use/NFR license.

b. Research and Development Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Research and Development Use", "Lab Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal research and development.

c. Evaluation Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Evaluation Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of the Software.

d. Beta Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Beta Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of a Beta Version of the Software.

e. Education Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Educational Use," "Training Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of the Software.

7. Maintenance Services; Updates.

a. General. Subject to the Pulse Secure Policies, Pulse Secure may make available Maintenance Services. All Maintenance Services are subject to the terms and conditions of this Agreement and the applicable SDD.

b. Subscriptions. If Your Software is licensed under a Subscription, the applicable Maintenance Services for that Software shall be included in the Subscription for the term of the Subscription, as indicated in your Proof of Entitlement and applicable SDD. If Your license is not a Subscription License, then Maintenance Services are available only if You order them separately and purchase them at an additional fee.

c. Updates. Updates are available to You only as a part of Maintenance Services. By downloading or taking delivery of any Update, Your rights with respect to the Update are subject to the following: (1) the terms of the latest revision of this Agreement posted at the time of Your receipt of the Update; (2) the then-current applicable SDD; (3) any then-current Pulse Secure Policies; and (4) Your Proof of Entitlement for the Software. Your rights to use the Update are also subject to Your ceasing all use of the replaced Software (or, as the case may be, the replaced portion of the Software in the case where an Update is provided in the form of a patch).

8. License Restrictions, Limitations and Prohibitions
This Section 8 supersedes any contrary provision elsewhere in this Agreement and applies to all varieties of licenses, whether Special Purpose Licenses, Subscriptions, Perpetual or otherwise:

a. No Rights or Licenses Implied. Licenses or rights in the Software not expressly granted in this Agreement shall not arise by implication or otherwise.

b. Approved Source. You shall have no right or license in the Software unless You rightfully received the Software from an Approved Source.

c. No Sublicensing or Assignment. You may not sublicense, transfer or assign, whether voluntarily or by operation of law, any right or license in or to the Software or under any Proof of Entitlement. Any attempted sublicense, transfer or assignment shall be void.

d. If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization (collectively, a "Restructure") where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.

e. You are Sole Licensee. No rights or licenses in the Software or any Maintenance Services shall arise under this Agreement in favor of anyone other than You.

f. Separately Licensable Software. The software image that contains Software product that You license from Pulse Secure or its Approved Sources might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license under a separate order and at an additional fee. Specific features and functionality are included in Your license to the Software product You licensed only if published Pulse Secure Documentation for that Version of the Software identifies those features and functionality as being included.
g. Restrictions on charging a fee for access or use. You shall not allow any authorized user of the Software or other third party to grant anyone else access for a fee or other consideration to services, content or resources that are generated, managed, distributed, provisioned, billed or enabled by the Software.

h. Other Use Restrictions and Prohibitions. You shall not, directly or indirectly:

(i) Decompile, disassemble or reverse engineer the Software or modify, unbundle, or create derivative works based on the Software, except as expressly permitted by applicable law without the possibility of contractual waiver. If the law requires Pulse Secure to provide interface information to You to adapt the Software, Pulse Secure, at its option, may either (A) provide the information to You subject to Your acceptance of non-disclosure and use limitation terms that Pulse Secure reasonably requires, or (B) perform that adaptation itself at a reasonable charge for services;

(ii) Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by Pulse Secure;

(iii) Detach or separate any libraries, files, modules or other components embedded within a Software product or within a particular software image You have received even if any such library, file, module or other component is separately licensable, or use any such modules, files or other components separately from the Software product or software image in which it is embedded (except to the extent that a documented feature of the Software product is implemented by doing so);

(iv) Furnish any copy of the Software or other means of access to the Software to any third party other than to Your contractor(s) solely for Your benefit in performing contract services for You and in that case only if that contractor has agreed to adhere to the terms of this Agreement. If You do furnish Software or access to Software to Your contractor(s), You shall remain fully and primarily responsible to Pulse Secure for compliance with all provisions of this Agreement;

(v) Remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files notices, disclaimers, marks and labels included in the Software as delivered by Pulse Secure; or

(vi) Use or allow use of the Software in violation of any applicable law or regulation or to support or facilitate any illegal activity.

9. License and Maintenance Contract fees; Taxes.

a. Fees. Unless otherwise specified in, Your Proof of Entitlement or a separate written agreement between You and Pulse Secure; License fees, Subscription fees and fees for Maintenance Services contracts are due and payable in advance upon Your placement of an order.

b. Taxes. All prices and fees payable in respect of any license to Software (including any Subscription) or any Maintenance Services contract entered into with Pulse Secure are exclusive of tax. You shall be responsible for paying taxes arising from the licensing or delivery of Software (including any Subscription) or purchase of Maintenance Services. If applicable, valid exemption documentation for each taxing jurisdiction shall be provided to Pulse Secure prior to invoicing, and You shall promptly notify Pulse Secure if Your exemption is revoked or modified. All payments that You make shall be net of any applicable withholding tax. You will provide reasonable assistance to Pulse Secure in connection with such withholding taxes by promptly providing Pulse Secure with valid tax receipts and other required documentation showing Your payment of any withholding taxes; completing appropriate applications that could reduce the amount of withholding tax to be paid; applying for reduced tax rates; and notifying and assisting Pulse Secure in any audit or tax proceeding related to transactions hereunder. Your obligations under this Section 9.b shall survive termination or expiration of this Agreement. Pulse Secure shall state separately on its invoices taxes excluded from the prices and fees, and You agree either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

10. Termination.

a. Effect of Termination or Expiration. If Your license term expires without renewal or reinstatement or otherwise terminates, then You shall promptly destroy or return to Pulse Secure all copies of the Software and related documentation in Your possession or control.

b. Survival. The provisions of Sections 8, 9.b, 10.c, 10.d and 11-28 shall survive termination or expiration of this Agreement.

11. Recordkeeping and Audit.

a. Your Duty to Monitor Use. You agree to monitor Your use of all Software and generate accurate, complete and auditable records of the levels of that use.

b. Reports of Excess Use; Purchase of Additional License Metric Units. If at any time Your maximum level of use of the Software exceeds the number of License Metric Units You have purchased, then on or before ten (10) days after the last day of the calendar quarter in which Your level of use first exceeded that limit, You shall (i) notify Pulse Secure in writing of Your maximum level of use and (ii) order and purchase sufficient License Metric Units (in increments of the applicable minimum allowable number of License Metric Units) to meet or exceed the maximum level of use of the Software during such calendar quarter. Your Proof of Entitlement or separate written agreement with Pulse Secure may require You to report on Your usage more often. Failure either to timely report such excess use or to timely purchase and pay for the required additional License Metric Units in accordance with this subsection 11.b shall be a material breach of this Agreement.

c. Pulse Secure’s Right to Audit. In order to enable Pulse Secure to verify Your compliance with this Agreement, You shall, throughout the term of the license and for three (3) years thereafter, provide to Pulse Secure and its professional advisors access to such facilities, personnel, records and reports, for their inspection and copying, as reasonably necessary to validate compliance with this Agreement but no more than once every 12 months. Pulse Secure and its professional advisors shall comply with all Your security requirements. This includes:

i) all Software monitoring records generated and maintained under this Section 11, and

ii) all other written or electronic data and reports that You generate or receive relevant to a determination of whether You have complied with this Agreement.

d. If any inspection under subsection 11.c discloses that You used the Software in excess of applicable License Metric Units and failed to timely comply with subsection 11.b, then on notice of the inspection results, Pulse Secure shall immediately:
i) invoice You and You shall purchase and pay for sufficient additional License Metric Units (in increments of the applicable minimum allowable License Metric Units) to meet or exceed Your maximum level of use of the Software; and that may have been required for Your use which at any time exceeded Your purchased License Metric Units;

ii) invoice You and You shall purchase and pay for contracts for Maintenance Services sufficient to cover Your new total number of License Metric Units;

The remedy stated in this Section 11.d is in addition to any other remedy Pulse Secure may otherwise have.

12. Confidentiality. The parties agree that aspects of the Software and associated documentation are the confidential property of Pulse Secure. As such, You shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which, at a minimum includes restricting access to the Software to Your employees and contractors having a need to use the Software for Your internal business purposes.


Pulse Secure treats Your information in accordance with its Privacy Policy found at http://www.pulsesecure.net/legal/privacy-policy.


Pulse Secure and Pulse Secure's licensors, respectively, retain exclusive ownership of all right, title, and interest in and to all intellectual property in the Software. Nothing in this Agreement constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software.

15. Limited Warranties.

a. Software Limited Warranty

(1) SOFTWARE LICENSED UNDER A SPECIAL PURPOSE LICENSE ARE FURNISHED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

(2) For any other license of Software under this Agreement, Pulse Secure warrants for Your sole benefit that for a period of ninety (90) days from the Start Date (the "Software Warranty Period"), the Software shall substantially conform to the Documentation. You may not make a software warranty claim after the lapse of the Software Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF PULSE SECURE FOR BREACH OF ANY WARRANTY REGARDING SOFTWARE UNDER THIS SECTION 15 SHALL BE THE REPLACEMENT OF THE DEFECTIVE SOFTWARE.

b. Restrictions: No warranty will apply if the Software (i) has been altered, except by Pulse Secure; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation and instructions supplied by Pulse Secure; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed pursuant to a Special Purpose License. In addition, Software is not designed or intended for (i) use in the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; (iii) operating life-support or life-critical medical equipment or (iv) incorporation in a dwelling or for personal, family, or household purposes or otherwise for use as a consumer product, and Pulse Secure disclaims any express or implied warranty of fitness for such uses. You are solely responsible for backing up its programs and data to protect against loss or corruption. PULSE SECURE WARRANTY OBLIGATIONS DO NOT INCLUDE INSTALLATION, REINSTALLATION OR MAINTENANCE SERVICES OF ANY KIND.

c. Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 15, TO THE EXTENT PERMITTED BY LAW, PULSE SECURE DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. PULSE SECURE DISCLAIMS ANY WARRANTY, REPRESENTATION OR ASSURANCE THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, THAT WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

16. Limitation of Damages. To the extent permitted by law:

a. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF PULSE SECURE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS AND LICENSORS TO YOU FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (WHETHER UNDER CONTRACT OR STATUTE, IN TORT (INCLUDING PRODUCT LIABILITY) OR OTHERWISE), EXCEED THE: (i) PRICE PAID TO PULSE SECURE FOR LICENSED RIGHTS TO THE SOFTWARE, FOR THE CURRENT SUBSCRIPTION, OR FOR THE CURRENT CONTRACT FOR MAINTENANCE SERVICES, WHICHEVER GAVE RISE TO THE CLAIM.

b. IN NO EVENT SHALL ANY BREACH BY PULSE SECURE IN CONNECTION WITH ANY REPRESENTATIONS, WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE OR WITH ANY DUTIES RELATING TO FURNISHING YOU WITH MAINTENANCE SERVICES EXCUSE YOUR UNAUTHORIZED USE OF SOFTWARE OR IMPAIR PULSE SECURE’S RIGHT TO TERMINATE ANY LICENSE BASED ON YOUR BREACH OF THIS AGREEMENT.

c. NEITHER PULSE SECURE NOR ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR RELATING TO THE PULSE SECURE PLATFORM, SOFTWARE, USE OF THE SOFTWARE OR TO ANY MAINTENANCE SERVICES.

d. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.
e. TO THE EXTENT PERMITTED BY LAW, PULSE SECURE DISCLAIMS ANY AND ALL LIABILITIES OR OBLIGATIONS WHATSOEVER RELATED TO THE PULSE SECURE PLATFORM, SOFTWARE OR ITS LICENSING TO OR USE BY ANYONE OTHER THAN YOU.

f. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM PULSE SECURE’S NEGLIGENCE; (2) FRAUD; OR (3) ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

g. Pulse Secure has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability stated above. Those disclaimers and limitations reflect an allocation of risk between Pulse Secure and You, and they form an essential basis of the bargain between Pulse Secure and You.

17. Compliance with Laws; Export Requirements.
You shall comply with all applicable laws and regulations in connection with the movement and use of the Software and any Maintenance Services. You acknowledge and agree that the Software as well as related technical data and assistance that may be furnished in the course of the Maintenance Services may contain encryption or encryption technology and are all subject to legal and regulatory controls and restrictions on export and re-export, including those of the U.S. Department of Commerce. You warrant and represent that the Software was not furnished to You as a result of an export or re-export or import in violation of US or other applicable laws or regulations, that You are not on any Denied Persons list or other list published by the US Government of parties to whom exports or re-exports of products subject to export controls are forbidden, that no Software is located in or controlled from a site in a Group E country, and that You are not using any Software or technology furnished hereunder or in connection with any Maintenance Services to further activities in support of the development, manufacture or use of nuclear fuel or weapons, missiles, or chemical or biological weapons. You further covenant that You will immediately notify Pulse Secure if at any time those warranties and representation become no longer accurate. Regardless of any disclosure You might make to Pulse Secure of an ultimate destination of the Software, You shall not export, either directly or indirectly, any Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government as required. You understand and agree that Pulse Secure may without liability or breach impose certain restrictions and conditions on Maintenance Services in order to protect against violation of export control laws.

The Software is a "commercial item" as defined at Federal Acquisition Regulation (48 C.F.R.) ("FAR") section 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether You are the US Government or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement and the Proof of Entitlement.

19. Third Party Software
Any licensor of Pulse Secure whose software is embedded in the Software shall be a third party beneficiary with respect to this Agreement, and that licensor shall have the right to enforce this Agreement in its own name as if it were Pulse Secure. Certain third party software may be provided with the Software and is subject to the accompanying license(s), if any, of its respective owner(s). This Software is licensed subject to open source software licenses. For information, click here http://www.pulsesecure.net/techpubs/licensing/attribution or contact opensource@pulsesecure.net.

This Agreement (including all documents incorporated herein) and the terms of any contract for Maintenance Services with Pulse Secure shall be governed by the Federal laws of the United States (without reference to its conflicts of laws principles). The provisions of the U.N. Convention for the International Sale of Goods shall not apply. The provisions of the Uniform Computer Information Transactions Act shall not apply.

21. Force Majeure
Except for Your duty to make payment for Software licenses or contracts for Maintenance Services, and except for Your unauthorized installation or use of Software, neither party will be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises ("Force Majeure"), provided that the party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance. Either party shall be entitled to terminate this Agreement if the Force Majeure event continues for a period of one month.

22. Applicability of This Agreement.

a. Separate Signed Agreements. If You and an authorized representative of Pulse Secure have signed a valid separate written agreement governing Your use of any or all Software licensed from Pulse Secure, then with respect to that Software that signed agreement will take precedence over any inconsistent terms of this Agreement.

b. Transition Rules. If You licensed any Software from Pulse Secure under a different End User License Agreement, then this Agreement shall apply to that Software if and when, following posting of this Agreement at http://www.pulsesecure.net/support You either purchase additional License Metric Units for the Software, renew the license at the end of the license term or reinstate the license after the license expires.

23. Complete Agreement; Modifications.
Except as otherwise provided in subsection 22.a, this Agreement together with the Applicable SDD, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, commitments or representations, oral or written related to the Software and Maintenance Services. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. Except as otherwise provided in subsection 22.a, this Agreement may not be amended or modified except by a writing executed by the duly authorized representatives of both parties.

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remainder of this Agreement. This Agreement and associated documentation have been written in the English language, and the parties agree that the English version will govern.

25. Notification.
Except as otherwise provided elsewhere in this Agreement, any report or notice under this Agreement shall be given in a writing, if to Pulse Secure by mail to 2700 Zanker Road, Suite 200, San Jose, CA 95134 USA, Attn: Legal Department, provided that the notice identifies You by name, address and
email address; or, if to You, by email to Your contact email address (or by mail addressed to Your street address that is associated with Your user account for registration with Pulse Secure. If You have no such user account, then notification shall be deemed given to You by emailing or mailing notice to any office or contact email address for the Approved Source from which You acquired Your license.

26. Waiver.
The failure of Pulse Secure to require Your performance of any provision of this Agreement shall not affect Pulse Secure's full right to require such performance at any time thereafter; nor shall its waiver of a breach of any provision hereof be taken to be a waiver of the provision itself.

27. Translations.
Several translations of this Agreement may appear at http://www.pulsesecure.net/support. To the extent of any inconsistency between the English version of this Agreement and any non-English version the English version shall govern.

The following definitions apply to capitalized terms used this Agreement:

- "Agreement" means this End User License Agreement ("EULA").
- "Approved Source" is Pulse Secure, or a distributor or reseller authorized by Pulse Secure to distribute Software and Maintenance Services in the territory in which You are located.
- "Beta" is a version of the Software that (i) is still in its testing phase and has not yet been released commercially and (ii) Company agrees to provide feedback regarding use of and improvements to the Software.
- "License Metric" is a parameter for the access or use of the Software, as described in Section 5.
- "License Metric Unit" is a unit of measurement for the number of seats for the License Metric that You purchased for access or use of the Software.
- "Maintenance Services" for Software means the set of software maintenance services described in the Applicable SDD.
- "NFR" means "Not for Resale" and is limited to demonstration use by a Reseller.
- "Proof of Entitlement" is a Pulse Secure order confirmation or other Pulse Secure-issued written or electronic confirmation of Pulse Secure's grant to You of a license. The Proof of Entitlement must identify You, the Software licensed, any applicable License Metric and, if applicable, the License Metric Units. The Proof of Entitlement must also indicate whether the license is a Subscription, the term of the license and, if it is a Special Purpose License, the kind of Special Purpose License. If Your license is to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates, proof of Your purchase of the Pulse Secure Platform on which the operating system software runs shall serve as Your Proof of Entitlement but only as long as You own or lease the Pulse Secure Platform.
- "Pulse Secure" means Pulse Secure, LLC.
- "Pulse Secure Platform" means any hardware router, switch or other network hardware, equipment or devices marketed and sold by Pulse Secure.
- "Pulse Secure Policies" are Pulse Secure’s then-current policies and procedures, which may be found at http://www.pulsesecure.net/support
- "Release" is a particular object code image of a software product that is identified by a Release denomination starting with “x.y” followed by additional image identifying string.
- "SDD" means the Service Description Document detailing Maintenance Services for the specific Software, which may be found at http://www.pulsesecure.net/support
- "Software" means the software product identified in Your Proof of Entitlement, and includes 1) machine-readable instructions and data, 2) components, files, and modules, 3) any accompanying audio-visual content, and 4) accompanying activation keys, if any, and 5) associated Documentation. Except where the context otherwise requires, Software includes any Update of that Software that You rightfully receive under a Subscription or contract for Maintenance Services.
- "Special Purpose License" means any of the licenses described in Section 6 of the Agreement.
- "Start Date" means the date of acceptance of this Agreement through use of the Software or otherwise.
- "Subscription" means a license to Software for a finite, fixed term of use.
- "Update" means software that is an upgrade, bug fix, patch or other Release of Software licensed hereunder that Pulse Secure makes generally available free of incremental charge to customers purchasing a Subscription or contract for Maintenance Services.
- "Version" means one or more Releases of a particular software product with a common "x.y" denomination in the first two places of the Release identifier.
- "You" means the legal entity, or other business, governmental or not-for-profit organization (but excluding any parent, subsidiary or other affiliate of any of the foregoing) that (A) is the original end user purchaser of a license to the Software from an Approved Source, (B) accepts the terms of this Agreement, and/or (C) is identified as "Customer" or "End User" in the applicable Proof of Entitlement, if any.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Puppet Labs (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

c) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PUPPET LABS LICENSE, WARRANTY AND SUPPORT TERMS

This Software License Agreement ("Agreement") is between Puppet Labs, Inc., a Delaware corporation, ("Puppet Labs") and the Ordering Activity, as defined by GSA Order ADM4800.2H and as revised from time to time ("Customer"). This Agreement includes the terms and conditions of the GSA Schedule Contract, the Order, and the terms and conditions below. It constitutes the complete agreement between the parties regarding the license, support and maintenance of Puppet Enterprise™ software (the "Software"), and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning that same subject matter. Any modifications to this Agreement must be in
writing signed by a duly authorized representative of both parties. SHOULD A CONFLICT EXIST BETWEEN THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS OF THE SCHEDULE CONTRACT, THE SCHEDULE CONTRACT SHALL PREVAIL.

1. ORDERS. “Order” means an order placed by an Ordering Activity under the GSA Schedule Contract.

2. LICENSE. Subject to Customer's compliance with this Agreement, Puppet Labs grants to Customer a worldwide, limited, non-transferrable, revocable license to use the Software for the purpose of managing Customer’s IT infrastructure (whether on premises or in the cloud). Customer may reproduce the Software and use multiple copies concurrently, subject to the pricing terms of Section 6.


4. THIRD PARTY SOFTWARE. The Software includes components that included under open source licenses from third parties (the “Third Party Software”). The components are listed at http://www.puppetlabs.com/puppet-enterprise-licenses/.

5. RESTRICTIONS. The Software is licensed, not sold. Customer may not use the Software other than for Customer’s internal business purposes, and not for the purposes of any third party nor for any timesharing, rental, Internet, or application service provider, commercial hosting services, or service bureau basis. Other than as granted in Section 2, Puppet Labs and its licensors retain all right, title and interest in and to the Software, including all intellectual property rights, registered or unregistered, and wherever in the world those rights may exist (collectively, the “Puppet Labs Rights”). The Puppet Labs Rights include graphics, user and visual interfaces, design, structure, selection, coordination, expression, “look and feel”, arrangement, trademark, logo and other distinctive brand features of the Software (collectively, the “Puppet Labs Marks”). This Agreement does not permit Customer to distribute any product or service using the Puppet Labs Marks, including in connection with any Open Source Components. Puppet Labs shall retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Puppet Labs.

6. FEES AND PAYMENT. Customer will pay for a license subscription and for support and maintenance (per Section 7) based on the number of “Nodes” managed by the Software. A “Node” is a single network-connected device such as a server, desktop, or laptop (virtual machines that have a unique IP address are a separate Node from the physical machine on which they reside).

7. SUPPORT; CHANGES.

7.1 Support and Maintenance. In connection with any Paid License, Puppet Labs will provide Customer the support and maintenance services (“Support Services”) listed on Exhibit A, at either the “Standard” or the “Premium” level, as indicated in the Order. There is no support or maintenance available in connection with a Free License. If Support Services are terminated for any reason, any later reinstatement is at Puppet Labs’ sole option, including without limitation the condition that Puppet Labs offers Support Services to its customers generally for the Software in question.

7.2 Modules and Customer Changes. Puppet Labs makes available certain modules ("Modules") that may be used in connection with the Software, either bundled with the Software (including in an update or upgrade later provided) or through its website forge.puppetlabs.com ("Puppet Forge"). Any Modules bundled with the Software are licensed under this Agreement, and any Modules obtained through the Puppet Forge are subject to their accompanying license. Except for Modules that are bundled with the Software or where otherwise indicated by Puppet Labs on the Puppet Forge, Puppet Labs is not liable to support any Module, nor are such Modules covered by the warranty and indemnity terms of this Agreement. Furthermore, to the extent permitted by law, Puppet Labs is not responsible to support, and is not liable under this Agreement in any way (including warranty and indemnity) for, any changes made by Customer to the Software.

8. WARRANTY; DISCLAIMER

8.1 General Warranties. Puppet Labs represents and warrants that it has sufficient ownership or authority to grant to Customer the license stated in Section 2. Each party represents and warrants that: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (b) it has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery and performance of this Agreement.

8.2 Product Warranty. Puppet Labs warrants to Customer that the Software will perform in all material respects as specified in its accompanying documentation under normal use for a period of thirty (30) calendar days from initial receipt or access. Customer’s exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software and Puppet Labs, at its option, will replace it or refund any paid fee for the Software. This warranty applies to Third Party Software only to the extent its failure to operate causes the Software to fail to conform to this warranty.


9. LIMITATION OF LIABILITY. EXCEPT AS STATED BELOW, EACH PARTY’S LIABILITY TO THE OTHER UNDER THIS AGREEMENT IS LIMITED AS FOLLOWS: (A) NEITHER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, LOST DATA OR LOST SAVINGS); AND (B) NEITHER SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS IN EXCESS OF THE GREATER OF FIVE HUNDRED DOLLARS ($500) OR THE AMOUNTS PAID BY CUSTOMER TO PUPPET LABS IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THESE LIMITS DO NOT APPLY TO ANY LIABILITY THAT ARISES FROM ANY CLAIM FOR UNPAID FEES OR THE UNLICENSED USE OF THE SOFTWARE. THESE LIMITS APPLY REGARDLESS OF THE FORM OF THE CLAIM (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 USC 7101-7109.

9.4 LIMITATION OF LIABILITY. EXCEPT AS STATED BELOW, EACH PARTY’S LIABILITY TO THE OTHER UNDER THIS AGREEMENT IS LIMITED AS FOLLOWS: (A) NEITHER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, LOST DATA OR LOST SAVINGS); AND (B) NEITHER SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS IN EXCESS OF THE GREATER OF FIVE HUNDRED DOLLARS ($500) OR THE AMOUNTS PAID BY CUSTOMER TO PUPPET LABS IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THESE LIMITS DO NOT APPLY TO ANY LIABILITY THAT ARISES FROM ANY CLAIM FOR UNPAID FEES OR THE UNLICENSED USE OF THE SOFTWARE. THESE LIMITS APPLY REGARDLESS OF THE FORM OF THE CLAIM (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THIS SECTION 9 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238—PRICE REDUCTIONS, CLAUSE 52.212-4(H)—PATENT INDENMIFICATION, AND GSAR 552.215-72—PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION).

10. EXPORT CONTROL. As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations (“EAR”); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software for use in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the
relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions.

11. GOVERNMENT USERS. The Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

12. GENERAL. The laws of the United States govern this Agreement Customer and Puppet Labs may only amend or modify this Agreement, or waive any right under this Agreement, in a writing that is signed by both parties and that expressly references this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement. As used in this Agreement, "includes" (or "including") means without limitation.
Exhibit A
Support and Maintenance Terms
Last Updated on January 15, 2014

These Support Services Terms describe the Support Services which current, compliant subscribers of Support Services are entitled to receive pursuant to the Software License Agreement between Puppet Labs and Customer ("Master Agreement"). These Support Services Terms form an integral part of, and are incorporated by reference into, the Master Agreement. Capitalized terms used in these Support Services Terms without definition have the meaning defined in the Master Agreement.

1. Definitions.
"Error" means a malfunction in the Software that can be duplicated by Puppet Labs that materially degrades the use or performance of the Customer business system or software, including the Business System.
"Fix" means the repair or replacement of object code versions of the Software to remedy an Error.
"Priority 1 Error" means an Error that renders the Software inoperative or materially degraded with respect to the Business System, such that: (i) the Business System's production system is severely impacted or completely shut down, or (ii) the Business System's system operations or mission-critical applications are down.
"Priority 2 Error" means an Error that degrades Software performance with respect to the Business System.
"Priority 3 Error" means an Error that affects Customer's use of the Software, but does not materially degrade Software performance with respect to the Business System.
"Technical Contact" means a Customer employee technically familiar and competent with Customer's systems (including the Business System), infrastructure and use of the Software, who: (i) has "read, write and execute" access to the necessary files, English language communication skills and relevant technical knowledge; and (ii) is the designated Customer contact to receive Support Services, and to resolve Customer technical issues related to the Software. The permitted number of Technical Contacts is based on the level of Support Services purchased by Customer, and is set forth in the table below. The first two (2) Technical Contacts are set forth in the applicable Order Form, and may be changed by Customer upon five (5) business days prior written notice to Puppet Labs.
"Update" means subsequent releases of the Software that are generally made available by Puppet Labs to those of its customers using the Software as part of Support Services at no additional charge, other than media and handling charges. Updates may include updated code to accommodate changes in applicable industry standards. Updates shall not include any releases, enhancements, functionality or products which Puppet Labs licenses separately or provides at a fee separate from the Support Services fee. Updates are delivered only on an as if and when available basis.

2. Support Services Coverage. Subject to these Support Services Terms, including the table set forth below, and the other terms of the Master Agreement (including, without limitation, Customer's payment of the applicable Support Services fees to Puppet Labs), Puppet Labs will provide Customer with the Support Services described herein for the applicable Software, exclusive of any integration issues between the Software and applicable Third Party Software. Customer shall designate the permitted number of Technical Contacts who are responsible for resolving user issues, and only such Technical Contacts may contact Puppet Labs for the provision of Support Services. Support Services do not include anything not set forth in these Support Services Terms, and specifically excludes support of any hardware or any software other than the Software, including without limitation, any integration with Third Party Software. The Support Services telephone numbers, email address and Puppet Labs Support Portal are located at http://puppetlabs.com/services/customer-support.

3. Software Maintenance. Puppet Labs will periodically, and in its sole discretion, provide Customer with Fixes to Errors and Updates to Software.

4. Customer Obligations. Customer and its Technical Contacts shall: (i) make reasonable efforts to resolve Customer issues or identify issues as relating to the Software prior to contacting Puppet Labs for Support Services; and (ii) provide Puppet Labs with sufficient information and resources to address the Error, and access to the personnel, hardware, and any additional software as reasonably necessary to enable Puppet Labs to reproduce, analyze and address the Error.

5. Exclusions. Puppet Labs is not obligated to provide Support Services when: (i) the Software has been changed, modified or damaged; (ii) the issue is caused by Customer's negligence, misuse of software or hardware, hardware malfunction or other causes other than the Software; (iii) the issue is caused by hardware, third party software or infrastructure; or (iv) the version of the Software is not a currently supported version, as determined by Puppet Labs' announced policies regarding the support of such versions.

6. Free Public Training. For Premium Support Services customers, during each yearly term of Premium Support Services, Puppet Labs offers up to four (4) placements per Support Services term in public classes offered by Puppet Labs at no additional cost to Customer. These free classes (i) are only offered to current Premium Support Services customers, (ii) must be given directly by Puppet Labs (and not a Puppet Labs training partner), (iii) must be taken during the current Support Services term, and (iv) expire at the end of the current Support Services term and Customer is not entitled to any compensation if the classes are not used. The four (4) class sessions may be taken by up to four individuals, but in no event will Customer receive more than four (4) individual free class sessions per Support Services term (e.g. one individual may take four class sessions or four individuals may each take one class session).

<table>
<thead>
<tr>
<th>Support Services</th>
<th>Standard</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hours of Coverage</strong></td>
<td>Business Hours: (6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays)</td>
<td>24 x 7 x 365 for Priority 1 issues. All other issues: 6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays.</td>
</tr>
<tr>
<td><strong>Email Support</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Puppet Labs Support Portal</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Phone Support</strong></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Support Channel</strong></td>
<td>Email support, access to Puppet Labs Support Portal</td>
<td>Email support, phone support, access to Puppet Labs Support Portal</td>
</tr>
<tr>
<td><strong>Number of Cases or Incidents/month</strong></td>
<td>5</td>
<td>Unlimited</td>
</tr>
<tr>
<td><strong>Technical Contacts</strong></td>
<td>Up to 4</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Feature Request Priority</td>
<td>No</td>
<td>Yes</td>
</tr>
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<td>--------------------------</td>
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</tr>
<tr>
<td>Updates to the Software</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Free Public Training</td>
<td>None</td>
<td>For up to 4 Engineers</td>
</tr>
</tbody>
</table>

### Response Guidelines

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1 Error</td>
<td>1 Business Hour</td>
</tr>
<tr>
<td>Priority 2 Error</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Priority 3 Error</td>
<td>12 Business Hours</td>
</tr>
</tbody>
</table>
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Qualtrics, LLC ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America's GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341)), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included in the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer in writing as soon as it is reasonably possible after the Contractor has become aware of the occurrence.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

f) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**QUALTRICS, LLC**

**QUALTRICS, LLC LICENSE, WARRANTY AND SUPPORT TERMS**

1.0 **Background**

Contractor through Qualtrics will provide the Qualtrics Service to Ordering Activity (“Licensee”) as an end user customer. Qualtrics will use, operate, and/or make available applicable software, hardware, network, systems, platforms, and/or other technologies and expertise reasonably
required to provide the Qualtrics Service to Licensee. The Qualtrics Service shall be hosted on Qualtrics’ servers. Qualtrics may, at its election, outsource the hosting to a trusted third party in the business of hosting Internet services and/or applications.

2.0 License of Qualtrics Service

Contractor grants Licensee a non-exclusive, non-transferable worldwide license and lease, during the term of the Delivery Order, to use the Qualtrics Service for Licensee’s own internal business purposes.

2.1 Access: During the term of the Delivery Order, provided that Licensee has paid all fees due and owed to Contractor and is in compliance with the terms of this Attachment A, Licensee will be able to access the Qualtrics Service by going to the web site specified in Exhibit 1. The Qualtrics Service will prompt Licensee for its login and password information and, if correct, will provide Licensee with access to the Qualtrics Service.

2.2 Unauthorized Duplication or Use: Licensee shall use commercially reasonable efforts to prevent its employees and other third parties from making unauthorized copies of any content in the Qualtrics Software or using the Qualtrics Service in violation of this Attachment A. If Licensee discovers any such unauthorized duplication or use, it will promptly notify Contractor through Qualtrics and take commercially reasonable actions to resolve the problem as soon as reasonably possible.

2.3 Restrictions: Licensee is not permitted to sublicense the Qualtrics Software to third parties without written permission of Qualtrics except to affiliates and third party vendors solely for providing services for Licensee and not for their own use.

3.0 Support and Maintenance

In consideration of the fees paid by Licensee, as part of the Qualtrics Services, Contractor through Qualtrics will provide the following support and maintenance services:

3.1 Technical Support: Contractor through Qualtrics shall provide Licensee with telephone-based and web site-based technical support services to assist Licensee in utilizing the Qualtrics Service, including the Software. Licensee may telephone or e-mail Qualtrics’ offices for support during Qualtrics’ regular business hours, 6:00 p.m. Sunday to 6:00 p.m. Friday U.S. Mountain Time (0100 Monday to 0100 Saturday GMT), except U.S. holidays. Qualtrics will respond to telephone calls or e-mails based on the following criteria: (a) the order that such calls or e-mails are received; and (b) the relative importance of such calls or e-mails as reasonably determined by Qualtrics. Qualtrics shall make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. Licensee agrees to cooperate with Qualtrics in providing such documentation and information as Qualtrics may reasonably request, so that Qualtrics can verify and reproduce the reported error. Additionally, Licensee may log on to the support web site to register e-mail requests.

3.2 Modifications and Enhancements: Contractor through Qualtrics may also make modifications to the Qualtrics Service to improve and enhance the Qualtrics Service, as it deems appropriate in its sole discretion, by adding additional service options, improving the user interface and otherwise responding to its licensees’ feedback and requests. Qualtrics will make all such improvements and enhancements (including, but not limited to, error corrections, bug fixes and performance or functionality improvements) available to Licensee under the terms of this Attachment A at no additional charge. Licensee may also utilize Qualtrics’ support web site to make enhancement requests and other special requests.

4.0 Account Managers

Each party shall appoint an Account Manager, as set forth on the signature page. The Account Managers shall be responsible for addressing and resolving issues relating to the delivery and use of the Qualtrics Service. Either party may change its Account Manager upon written notice to the other party.

5.0 Ownership

Subject to the licenses and rights granted herein, the parties acknowledge that:

5.1 As between the parties, Qualtrics owns all right, title and interest in and to the Qualtrics Service, all related software and technology, and all Qualtrics content provided in connection with the Qualtrics Service, including all intellectual property rights in the foregoing. Qualtrics reserves all rights not expressly granted to Licensee in this Attachment A.

5.2 Licensee owns all right, title and interest in and to any questions, responses, and other data and information input by Licensee and its survey respondents in the surveys conducted through the Qualtrics Service (“Data”) including, but not limited to, any survey created by Licensee, as well as any additional data provided by the Licensee as part of the survey process including personally identifiable information provided by Licensee’s survey respondents and respondents. All such Data shall be deemed Confidential Information of Licensee pursuant to the terms of the Schedule Contract and shall not be utilized by Qualtrics for any purpose other than to perform its obligations under this Attachment A or as agreed to in writing by an authorized representative of Licensee.

6.0 Term and Termination

6.1 Term: The initial term of a Delivery Order is one (1) year from the Effective Date. A Delivery Order may be renewed for additional one (1) year term upon mutual agreement in writing.

6.2 Effect of Termination: Upon termination of the Delivery Order for any reason, Contractor through Qualtrics shall discontinue providing the Qualtrics Service to Licensee and Licensee shall cease using the Qualtrics Service. Each party shall promptly return or destroy all Confidential Information of the other party, as applicable, in accordance with the terms of the Confidential Information in section of the Schedule Contract. Within thirty (30) days of the date of termination, Licensee shall pay to Contractor all outstanding
undisputed fees due to Contractor as of the effective date of termination. For thirty (30) days of the date of termination, Licensee shall have reasonable access to retrieve and secure its data contained in the service. In addition, any terms that by their nature extend beyond termination of the Delivery Order shall survive.

7.0 Representations and Warranties

7.1 By Contractor: Contractor represents and warrants to Licensee that:

(a) it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Contractor is bound;

(b) it will comply with the laws, rules and regulations that apply to Contractor in connection with the conduct of its business and its provision of the Qualtrics Service;

(c) it will not knowingly infringe on any party’s patent, trademark, mask work, copyright, trade secret, or other intellectual property right; and will not violate any laws, rules, or regulations applicable to Qualtrics or the Qualtrics Service; and

(d) it will use commercially reasonable efforts to allow Licensee to access the Qualtrics Service seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine percent (99%) reliability to the Qualtrics Service, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Licensee or Licensee’s system, or (iii) due to other causes outside of the reasonable control of Qualtrics, including without limitation malfunction or cessation of Internet services by any third party network or ISP.

(e) it will use commercially reasonable efforts to ensure that updates and/or new releases will not introduce, any program, routine, subroutine, or data (including malicious software or “malware,” viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the Service or any software or system used by Licensee in connection with the Service, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Service or any system or software used in connection with the Software to be destroyed, damaged, or rendered inoperable.

(f) to the best of Contractor’s knowledge, it shall not violate the software as delivered to the Licensee shall not violate any proprietary rights of third parties, including, without limitation, patents, copyrights or trade secrets; and, that the software as delivered to the Licensee will not violate any applicable law, rule, regulation or contractual obligations or confidential relationships which Contractor may have or with any third party, or violate the privacy of any third party from whom Contractor through Qualtrics may obtain any information in connection therewith.

7.2 By Licensee: Licensee warrants and represents to Contractor that:

(a) it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Licensee is bound;

(b) it will comply with the laws, rules and regulations that apply to Licensee in connection with the conduct of its business and its use of the Qualtrics Service; and

(c) it will not knowingly utilize (or allow utilization of) the Qualtrics Service in any manner prohibited by this Attachment A or written Qualtrics policies provided to Licensee, or reverse engineer or tamper with the security of any Qualtrics computer software.

7.3 Limitation of Warranties: EXCEPT AS SET FORTH IN THIS SECTION 7, (i) NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, AND (ii) ALL PRODUCTS AND SERVICES ARE PROVIDED BY CONTRACTOR ON AN ‘AS IS’ BASIS. CONTRACTOR DOES NOT WARRANT THAT THE QUALTRICS SERVICE OR ITS SOFTWARE WILL BE ERROR-FREE OR THAT ALL NON-CONFORMITIES CAN BE OR WILL BE CORRECTED. CONTRACTOR DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY CONTENT, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, CONDITIONS AND REPRESENTATIONS RELATED TO THE SUBJECT MATTER OF THIS ATTACHMENT A, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND MERCHANTABILITY.

Exhibit 1

1. QUALTRICS SERVICE: Develop and host the survey website which includes all survey development tools, e-mail delivery capabilities, online analysis tools, online survey libraries, tutorials and help facilities.

2. SCOPE OF LICENSE: The term of the license for the Qualtrics Software is one year, beginning on the date below and includes features as outlined below.

3. SUPPORT AND TRAINING: Contractor through Qualtrics will provide online tutorials, phone support and respond to e-mails during normal business hours. Qualtrics will provide a U.S. toll free number that may be used for contacting Qualtrics regarding support issues. As each survey project tends to be uniquely structured the majority of training will occur through telephone and e-mail support. Quarterly training calls may also be scheduled by the Qualtrics Account Manager to discuss and/or demonstrate new features that have been made available by Qualtrics.

4. BRANDED SURVEY SITE: This license will operate under a branded platform, which will be created by Qualtrics. The cost of this branded platform is included in the bid. Any changes to the site and domain are also included in the bid.
5. SKINS TO MATCH: The corporate branded solution comes with skins in a library that can be used to change the look and feel of a survey. Licensee will have the ability to request new skins that will fit their branding.

6. REQUESTS: A “Request” is a server call sent to Contractor through Qualtrics that occurs each time a site intercept code is triggered. Qualtrics will provide information on the number of requests to Licensee each month. In the event Licensee exceeds the number of allotted Monthly Requests by fifty percent (50%), or in the event Licensee exceeds the number of allotted Yearly Requests, Licensee must pay the overage at the current order rate.

7. DISTRIBUTION OF USERNAMES AND PASSWORDS: Contractor through Qualtrics will give the Licensee account manager an admin login name and password. With this admin login the account manager will be able to view the use of all users and create new usernames and passwords with unique permissions.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Rapid Ratings International, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be included at the time each new manufacturer was to be added to the Schedule Contract: Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the FAR 52.212-1(c) and the FAR 52.212-1(e) (as herein amended)); the Prompt Payment Act (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

### ATTACHMENT A

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**RAPIDRATINGS**

**RAPIDRATINGS LICENSE, WARRANTY AND SUPPORT TERMS**

**CUSTOMER AGREEMENT**
SECTION 1. DEFINITIONS.

1.1 “API Services” mean the set of application programming interfaces and related functionality that enables Customer to obtain information from the Subscription Services.

1.2 “Confidential Information” means all information regarding a Party’s business or affairs, including, business concepts, processes, methods, systems, know-how, devices, formulas, product specifications, marketing methods, customer lists, methods of operation, or other information, whether in oral, written, or electronic form, designated as confidential or that is disclosed under circumstances such that a reasonable person would know it is confidential.

1.3 “Documentation” means the user manuals, standard policies, training materials, and other materials describing the use and function of the Subscription Services. Documentation does not include the Subscription Reports.

1.4 “Order Form” means the ordering document specifying the Subscription Services purchased by Customer that is signed by Customer.

1.5 “Subscription Fees” means the fees stated on the applicable Order Form in accordance with the GSA pricelist.

1.6 “Subscription Reports” means the reports authored by RapidRatings and made accessible through the Subscription Service, such as FHR® reports. Subscription Reports does not include the Documentation.

1.7 “Subscription Services” means the products and services purchased by Customer under an Order Form for a number of Users and made available through the RapidRatings electronic functionality accessible via the internet and telecommunications applications, including applicable Subscription Reports, technical support, solicitation or survey services, API Services, and Documentation.

1.8 “Subscription Term” means the period of time during which the Customer may access the applicable Subscription Services as set forth in the applicable Order Form and commencing upon the Order Effective Date.

1.9 “Third Party Platform Provider” means the third-party service provider and infrastructure used with the Subscription Services.

1.10 “User” means an individual who is authorized by Customer to use the Subscription Service and has a login credential. A User may be an employee, contractor, or agent of Customer.

SECTION 2. SUBSCRIPTION SERVICES.

2.1 Access to Subscription Service. Subject to the terms and conditions of this Agreement, RapidRatings hereby grants the undersigned Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”) a limited, revocable, non-exclusive, non-transferable, non-sublicensable right to access and use the Subscription Services as set forth on the applicable Order Form in accordance with the GSA pricelist.

2.2 Restrictions. Without limitation, Customer shall not, and shall not permit any third party to: (a) use the Subscription Services in a manner not expressly permitted by this Agreement or in violation of applicable law; (b) attempt to access or access data, research, or software services that Customer is not expressly permitted to access in the Subscription Services or any database owned or maintained by RapidRatings, such as to access information of third parties without express written authorization or to benchmark or develop a competitive product or service; (c) copy, reproduce, distribute, publish, or otherwise make available copies or extracts in any medium of the Subscription Services, except that Users may download, use, and copy Subscription Reports for Customer’s own internal (confidential) use only; (d) sell, resell, rent, license, sublicense, rent, lease, or otherwise commercialize (such as in a service bureau offering) the Subscription Services; (e) use the Subscription Services to store or transmit malicious code (meaning code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses) or transmit malicious code to RapidRatings; (f) decompile, disassemble or reverse engineer any aspect of the Subscription Services or RapidRatings’ software generally (except to the extent that Customer cannot by law waive its right to do so); or (g) permit direct or indirect access to or use of any Subscription Service or database owned or maintained by RapidRatings in a way that circumvents a contractual usage limit, is excessive, or otherwise interferes with RapidRatings’ ability to provide the Subscription Services or other customers' use or enjoyment of the Subscription Services.

2.3 API Services. Customer’s use of the API Services are additionally subject to the provisions of Exhibit A, which is attached and hereby incorporated in its entirety into this Agreement.

2.4 Users. Customer shall have the right to increase the number of Users by providing RapidRatings with written notice and paying the additional Subscription Fees set forth on the applicable Order Form. At RapidRatings’ option, RapidRatings reserves the right to prorate a new User for the portion of a Subscription Term remaining at the time a new User is added, such that any added User access will terminate or expire on the same date as a prior User group. Customer will be responsible for each User’s compliance with this Agreement, Customer’s responsibility to monitor credentials, password usage, and otherwise prevent unauthorized access to or use of the Subscription Services and to promptly notify RapidRatings if unauthorized access or use is detected or suspected.

2.5 Monitoring and Audit Rights. RapidRatings reserves the right to use tracking software and similar technology that automatically collects information about Customer’s use of the Subscription Services to ensure Customer’s compliance with the restrictions in this Agreement and to confirm the access to the Subscription Service does not exceed the purchased number of Users. On not less than thirty (30) days’ advance written notice to Customer, no more than once a year, and at RapidRatings’ cost and expense, RapidRatings will have the right to audit Customer’s and any of its employees’ and contractor’s use of the Subscription Services to assure compliance with the terms of this Agreement. Customer will be responsible for ensuring reasonable cooperation with RapidRatings in connection with such audits and will provide RapidRatings with or obtain for RapidRatings access to such properties, records, and personnel as RapidRatings may reasonably require for such purpose. RapidRatings will comply with Customer’s Government security policies provided to RapidRatings in writing reasonably in advance of any such audit and will take commercially reasonable steps to avoid material disruption of Customer’s business. Any audit will occur during Customer’s normal business hours. If RapidRatings reasonably determines that Customer used the Subscription Services in excess of its number of purchased Users or otherwise in excess of its rights hereunder, RapidRatings may invoice Customer for such overuse and Customer will pay such invoice within thirty (30) days of receipt.

2.6 Modifications. RapidRatings reserves the right, in its sole discretion, to amend, change, modify, update, or discontinue any aspect of the Subscription Services at any time without notice to Customer, provided such changes are not material and will not decrease the overall level of service. RapidRatings reserves the right to implement and update minimum system requirements from time to time, and Customer acknowledges that it is Customer’s responsibility to maintain reasonably current systems and software to access the Subscription Services. For clarity, nothing in this Section supersedes the warranty provisions of Section 5.

2.7 Affiliates. This Agreement is between the expressly named Parties and does not extend to any affiliates or subsidiaries of the Parties without the express, written agreement of the Parties.

SECTION 3. RESERVED

SECTION 4. PROPRIETARY RIGHTS

4.1 Ownership of Intellectual Property Rights; Feedback. RapidRatings, including RapidRatings licensors, own all intellectual property rights in and to the Subscription Services. Subject to the limited rights expressly granted hereunder, RapidRatings, including RapidRatings licensors, hereby reserve all rights not expressly granted to Customer in this Agreement, and Customer will not acquire any such rights, whether by virtue of this Agreement, operation of law, estoppel, or otherwise. Customer shall not contest, directly or indirectly, the validity or
RapidRatings’ ownership of any intellectual property rights in and to the Subscription Services. Customer shall not do anything that may adversely affect the validity or enforceability of any intellectual property right licensed to or owned by RapidRatings, including any act, or assistance to any act, that would appropriate intellectual or proprietary information or infringe upon the intellectual property rights of any such intellectual property right. Customer irrevocably assigns to RapidRatings all right, title, and interest in and to any suggestions, enhancement requests, recommendations, or corrections (collectively “Feedback”) related to the Subscription Services, and agrees to provide RapidRatings with any assistance required to document, perfect, and maintain the rights in the Feedback at RapidRatings’ expense. RapidRatings will not be obligated to compensate or credit Customer or any third party for such Feedback or hold any Feedback in confidence. RapidRatings acknowledges that the ability to use this Agreement and any Feedback in advertising is limited by GSAR 552.203-71.

4.2 Enforcement. To the extent practicable, Customer shall make a good faith attempt to notify Rapid Rating promptly in writing if it has knowledge of a violation of or misrepresentations by RapidRatings of this Agreement or any misrepresentations by or on behalf of any third party. Customer shall provide RapidRatings with a copy of all documents and information relating thereto as long as such production is not proscribed by contract or other reason. RapidRatings shall have the right, but not the obligation, to take action in its own name to secure the cessation of any infringement or misappropriation of any intellectual property right or to bring an action against an alleged infringer. Customer shall cooperate with RapidRatings in RapidRatings’ enforcement of its intellectual property rights. Nothing in this Agreement or otherwise will be construed to impair or limit RapidRatings’ right to enforce its intellectual property rights against any third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

4.3 Confidential Information. Each Party shall use commercially reasonable efforts to prevent the unauthorized use, disclosure, or publication of the other Party’s Confidential Information and treat the other Party’s Confidential Information with the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but not less than reasonable care); provided, however, that each Party may disclose the Confidential Information of the other Party to third parties who: (i) have a need to know such Confidential Information for purposes of carrying out this Agreement, but only to the extent that such Confidential Information is needed to perform their obligations under this Agreement, and (ii) have entered into a written confidentiality agreement with a substantially similar standard of care. Each Party will use the other Party’s Confidential Information only as expressly permitted in this Agreement or as necessary to perform its obligations or enforce its rights in this Agreement. Customer grants RapidRatings a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, transferable, sublicensable license to store, host, reproduce, access, backup, and use the Confidential Information, and all modifications and derivative works of the Confidential Information, provided to RapidRatings in connection with the Subscription Services or Subscription Reports. The following information will not be considered Confidential Information: (i) information that is or becomes publicly available without fault of either Party; (ii) information with regard to a Party that was rightfully known by the other Party prior to commencement of discussions regarding the subject matter of the Agreement; (iii) information that was independently developed by a Party without use of the Confidential Information of the other Party; or (iv) information rightfully disclosed to a Party by a third party without continuing restrictions on its use or disclosure. Each Party shall notify the other Party immediately if it becomes aware of any unauthorized use, disclosure, or publication of such other Party’s Confidential Information. Each Party shall have the right to disclose the other Party’s Confidential Information as required by law or legal process or under the applicable rules of a securities market or exchange; provided, however, that the disclosing Party shall use reasonable efforts to give the other Party a reasonable opportunity to intervene to prevent such disclosure or to obtain a protective order, and that any Confidential Information so disclosed otherwise remains subject to the confidentiality obligations set forth in this Section. Neither the terms of this Agreement nor the pricing are Confidential Information. The Subscription Service, including any Feedback, is considered Confidential Information of RapidRatings. This provision expressly survives the expiration or termination of this Agreement in perpetuity with respect to the Subscription Services, Feedback, and Subscription Reports or other information downloaded, copied, or removed from the Subscription Service. RapidRatings recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552.

5.1 Customer Warranties. Customer hereby represents and warrants to RapidRatings that (i) Customer has the full right, power, and authority to enter into this Agreement and perform its obligations under this Agreement; (ii) Customer has not made any prior commitment that is inconsistent with the rights granted to RapidRatings in this Agreement; (iii) provision of Customer data, including any data provided by Customer licensed from or belonging to a third party, to RapidRatings for the uses contemplated in this Agreement will not violate the rights of any third party; and (iv) Customer will comply with all laws, rules, and regulations in its exercise of its rights and performance of its obligations under this Agreement.

5.2 RapidRatings Warranties. RapidRatings hereby represents and warrants to Customer that (i) RapidRatings has the full right, power, and authority to enter into this Agreement and perform its obligations under this Agreement; (ii) RapidRatings has the full right, title, and interest in and to any suggestions, enhancement requests, recommendations, or corrections (collectively “Feedback”) related to the Subscription Services, and agrees to provide RapidRatings with any assistance required to document, perfect, and maintain the rights in the Feedback at RapidRatings’ expense. RapidRatings will not be obligated to compensate or credit Customer or any third party for such Feedback or hold any Feedback in confidence. RapidRatings acknowledges that the ability to use this Agreement and any Feedback in advertising is limited by GSAR 552.203-71.

6.1 DISCLAIMER OF FORWARD-LOOKING STATEMENTS. The Subscription Services, including the Subscription Reports, may contain forward-looking statements that reflect RapidRatings’ current expectations regarding future events and business developments. The forward-looking statements involve risks and uncertainties. Actual developments or results could differ materially from those projected and depend on a number of factors, some of which are outside RapidRatings’ control.
6.2 DISCLAIMER OF INVESTMENT RELATED INFORMATION. CUSTOMER ACKNOWLEDGES THAT ANY INFORMATION PROVIDED BY THE SUBSCRIPTION SERVICE, INCLUDING THE SUBSCRIPTION REPORTS, IS NOT INTENDED TO BE A SUBSTITUTION FOR INVESTMENT ADVICE OR INVESTORS’ INDEPENDENT ASSESSMENT OF WHETHER TO BUY, SELL, OR HOLD ANY FINANCIAL PRODUCTS. RAPIDRATINGS IS NOT AN INVESTMENT ADVISOR. THE INFORMATION PROVIDED IN THE SUBSCRIPTION SERVICE IS DERIVED OBJECTIVELY BY RAPIDRATINGS FROM PUBLIC AND NONPUBLIC INFORMATION PROVIDED TO RAPIDRATINGS BY CUSTOMER AND THIRD PARTIES. IF CUSTOMER Chooses TO USE THIS INFORMATION IN FORMING THE BASIS FOR AN INVESTMENT DECISION, CUSTOMER SHOULD USE THE INFORMATION IN CONJUNCTION WITH OTHER INFORMATION. RAPIDRATINGS PROVIDES NO GUARANTEE WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF SUBSCRIPTION SERVICES, NOR THE INFORMATION OR CONCLUSIONS DERIVED FROM THE THEM. RAPIDRATINGS WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY TRADING OR INVESTMENT DECISIONS OR ANY OTHER BUSINESS DECISION BASED ON THE SUBSCRIPTION SERVICES. Customer represents and warrants to RapidRatings that it understands the methodology by which RapidRatings produces Subscription Services as follows: Subscription Reports are statements of opinion objectively created through the application of RapidRatings’ proprietary software logic to information about an entity from publicly available information, or with respect to private company ratings, information provided by Customer or a third party. RapidRatings’ software is a proprietary quantitative system that analyzes financial information contained in publicly available company filings made by issuers pursuant to applicable securities laws or private company financial statements provided by Customer or a third party. Periodically, RapidRatings randomly selects a small number of public company filings used in the ratings process to test the accuracy of the information provided by the third party(es) by comparing the information received from the third party to the public filings posted on the relevant governmental websites. RapidRatings is not responsible for either the accuracy or completeness of any public filings or any private company financial statements provided by Customer or a third party. Customer hereby acknowledges and agrees that RapidRatings has conducted a reasonable investigation of the factual elements relied upon in determining Subscription Reports, and that RapidRatings’ procedures to verify a company’s financial information are reasonable.

SECTION 7. RESERVED.

SECTION 8. TERM AND TERMINATION.

8.1 Term. The term of this Agreement will commence as of the Effective Date set forth in the Order Form and will continue for one year (the “Initial Term”), unless terminated sooner. Thereafter, the term of this Agreement may be renewed for unlimited, successive one-year periods (each a “Renewal Term”), by Customer issuing an Order Form for such Renewal Term.

8.2 Termination. Termination shall be governed by the FAR and the Contract Disputes Act. Recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, RapidRatings shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, appeal, claim, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

8.3 Suspension. RapidRatings may temporarily suspend Customer access to or use of the Subscription Services if Customer or Users violate any provision within Sections 2.1 (Access to the Subscription Services), 2.2 (Restrictions), 2.3 (API Services), 2.4 (Users), 4.1 (Ownership of Intellectual Property Rights; Feedback), or 4.2 (Enforcement) in the Agreement, or if in RapidRatings’ reasonable judgment, the Subscription Services or any component thereof are about to suffer a significant threat to security or functionality.

8.4 Effect of Termination. Upon the termination of this Agreement: (i) Customer shall immediately pay Rapid Ratings all amounts due under this Agreement for Subscription Services up to the date of termination; (ii) all access to and use of the Subscription Services will automatically and immediately terminate; and (iii) Customer shall, at RapidRatings’ option, return or destroy all Confidential Information belonging to RapidRatings in its possession and shall certify to Rapid Ratings that it has done so no later than 10 days after the termination of this Agreement; and (iv) the following Sections: 1, 2.3, 2.5, 4.1, 4.3, 6, 8, and 9, and those Sections which by their nature are intended to, will survive. For clarity, if any Order Form survives the expiration or termination of this Agreement, the provisions of this Customer Agreement will remain in effect and fully incorporated into the Order Form until the Order Term expires.

SECTION 9. GENERAL.

9.1 Marketing. Rapid Ratings may, in connection with the RapidRatings website, marketing, advertising, press release or other publicity, identify Customer as a customer of RapidRatings by use of Customer’s name and trademark logo in a manner no more prominent than RapidRatings other customers, to the extent permitted by GSAR 552.203-71.

9.2 Reserved.

9.3 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212-4 (f) Excusable delays. (JUN 2010).

9.4 Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable, then the provision will be deemed invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the Parties’ intent as manifested herein.

9.5 Notice, Execution, Construction. Any notice given by either Party to the other shall be in writing and will be sent by personal delivery, internationally recognized overnight courier with delivery confirmation, electronic notification (such as email), or U.S. Mail, certified or registered, postage prepaid, return receipt requested, to the respective address set forth in this Agreement, or such other address(es) as specified in writing by the Party in accordance with this Section. All notices will be deemed effective upon delivery (or attempted delivery), except that electronic notification shall be deemed effective upon receipt by the receiving Party. This Agreement may be executed in counterparts, all of which together will constitute the entire fully-executed instrument. If there is any conflict of terms between this Agreement and an Order Form, the Order Form will control for the subject matter of the Order Form. Facsimile, photocopy, or electronic signatures will be given the same effect as originals or ink signatures. The headings to Sections of this Agreement are for convenience or reference only and do not form a part of this Agreement and will not in any way affect its interpretation. All capitalized terms not defined in this Agreement are defined as set forth in the Order Form and vice versa. Neither Party will be afforded or denied preference in the construction of this Agreement, whether by virtue of being the drafter or otherwise. The terms “including”, “includes”, and “include” will be deemed to be followed by “without limitation”.

9.6 Use by U.S. Government. The Subscription Services, including any Feedback or derivatives thereof, made available by RapidRatings under this Agreement may be subject to export control, procurement, and/or other laws and regulations of the United States and other jurisdictions applicable to government contractors. Customer agrees to comply with all applicable laws and regulations. Customer represents that it is not currently, and that it has not been, debarred, suspended, or proposed for debarment by any government entity, including U.S. federal, state, and local government entity. Customer specifically acknowledges that it must comply with all applicable export control laws and agrees that it shall not permit Users to access or use any Subscription Services in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation. The Subscription Services provided by RapidRatings under this Agreement constitute a “commercial item,” as defined at FAR 2.101 and FAR Part 12. Consistent with this classification, use, modification, reproduction, release, transfer, performance, display, disclosure, or
distribution of the software by Customer and any other end user, including a government entity, are restricted by the terms of this Agreement, and the software service and any related documentation are licensed hereunder (i) only as "commercial items," and (ii) with only those rights as are granted to Customer under the Software and API Services Terms of this Agreement. Use of any RapidRatings software is restricted by the terms of this Agreement and, in accordance with FAR Section 12.212, is further restricted in accordance with the terms of RapidRatings' commercial end user license agreement/terms of use as displayed in the Subscription Services. Except as described herein, all other use is strictly prohibited. This section describing government use, consistent with FAR 12.212, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in software as a service, computer software, computer software documentation, or technical data related to RapidRatings (here, the Licensor) under this Agreement and in any contract or subcontract under which this software service is acquired or licensed. Neither Customer nor the government entity is entitled to the source code or object code.

9.7 Assignment. Neither Party shall assign, delegate, or otherwise transfer its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party (to be granted or withheld in its reasonable discretion). This Agreement will be binding upon and will inure to the benefit of the Parties and their permitted successors and assigns.

9.8 Merger and Amendment. This Agreement (including the applicable Order Form(s), which are hereby incorporated herein) together with the underlying GSA Schedule Contract, Schedule price list and Purchase Order(s) constitutes the entire understanding and agreement, and supersedes any and all prior or contemporaneous representations, understandings, and agreements between the Parties with respect to the subject matter of this Agreement, all of which are hereby merged into this Agreement. No amendment to this Agreement or waiver of any provision hereof will be valid or binding unless reduced to writing and duly executed by the Party or Parties to be bound thereby.

9.9 Waiver, Relationship. Third Parties. A Party’s failure to enforce a right or remedy in this Agreement will not constitute a waiver of such right or remedy. Nothing contained in this Agreement will be deemed to create, or be construed as creating, a joint venture or partnership between the Parties. Neither Party is, by virtue of this Agreement or otherwise, authorized as an agent or legal representative of the other Party, except that Customer authorizes RapidRatings to collect information from third parties on Customer’s behalf. There are no third-party beneficiaries of this Agreement.

EXHIBIT A

RapidRatings API Services Terms

Customer has requested access to RapidRatings application programming interface (API) and associated services and software (collectively, “API Services”). The API Services include a API that provides access to RapidRatings computed ratings and other computed quantitative metrics. The scope of data available using the API Services is as described in API Services Documentation. The API Services will facilitate Customer’s extraction of Subscription Service content and data as defined in the Customer Agreement and the API Services Documentation. The scope of the Subscription Services, including the Subscription Reports of companies to which Customer may have access via the API Services, is additionally limited by applicable Order Form(s).

Customer agrees to these terms and conditions as fully incorporated into the Customer Agreement (the “API Services Terms”). If there is a conflict between these API Services Terms and the Customer Agreement, the API Services Terms will control only for the applicable API Services. All capitalized terms have the definitions as provided in the Customer Agreement above, unless otherwise expressly stated herein.

Section 1. API Services, Limitations.

1.1 API Services. According to the terms and conditions of these API Services Terms and any applicable Order Form, Customer may access and use the API Services. For clarity, the API Services are provided pursuant to the Subscription Services terms and restrictions in the Customer Agreement and the API Services are provided on a non-exclusive basis.

1.2 Access Limitations. Customer may allow any employee or contractor to view the API Services. However, any use of any other Subscription Services content, such as Subscription Reports, obtained through access or use of the API Services, is limited to valid Users of Customer. Customer will require Users to comply with (and not knowingly enable them to violate) applicable law, regulation, and the API Service Terms. Customer will only access (or attempt to access) the API Services by the means described in the Documentation. If RapidRatings assigns Customer any credentials (e.g. client IDs, tokens, etc.), Customer must use them with the applicable API Services per the Order Form and Documentation.

1.3 Data Limitations. Customer agrees that data provided by RapidRatings through the API Services is provided on a company by company basis. All API Services requests shall be performed in accordance with the API Services Documentation and caching is not permitted, without the written consent of RapidRatings. Customer agrees that the API Services facilitate access and use of highly confidential third-party data that must be handled in accordance with the terms of these API Services Terms. Data must also be stored separately in the case of third-party application providers or data aggregators who are acting on behalf of (or contracted by) Customer to display the API Services. Customer understands that the API Services provide access to data that is deemed highly confidential by RapidRatings and third-parties. Customer further understands that release of this information may irreparably harm RapidRatings. Customer will use industry-standard practices and comply with any applicable laws related to data security to prevent unauthorized access or use of the data available through the API Services.

1.4 Usage Limitations. RapidRatings may set and enforce limits on Customer’s use of the API Services (e.g. limiting the number of API requests that Customer may make in a given interval or the data that is returned), in RapidRatings solitary discretion. Customer agrees to not circumvent or disable any such limitations. If Customer intends to use the API Service beyond the limitations, Customer must obtain RapidRatings’ express written consent. RapidRatings may decline such request or condition acceptance on Customer’s agreement to additional terms and/or charges for that use. RapidRatings may request reasonable information regarding any third-party contractor of Customer performing integration services or other services related to the API Services. When using the API Services, Customer will not (and will not allow others acting on Customer’s behalf to): a) sublicense the API Services for use by a third party, b) create an API Application that functions substantially the same as the API Services and offer it for use by third parties, c) perform an action or inaction with the intent of introducing any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature, d) use the API Services to defame, abuse, harass, stalk, or threaten others, in violation of the law or industry self-regulatory rules or principles, e) interfere with or disrupt the API Services or the servers or networks providing the API Services, f) promote or facilitate online gambling, equities or derivatives trading of any kind, g) reverse engineer or attempt to extract the source code of the API Services, h) copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third party any of the API Services content therefrom; i) use the API Services for any activities where the use or failure of the API Services could lead to death, personal injury, or environmental damage (such as the operation of nuclear facilities, air traffic control, or life support systems), or i) remove, obscure, or alter any RapidRatings terms of service or any communications or links to notices of those terms.

Section 2. Customer Applications.

2.1 API Applications and Monitoring. Customer may use the API Services content obtained through access or use of the API Services in Customer applications/user interfaces, where such applications may be created by Customer, Rapid Ratings, or a third party, as applicable (“API Applications”). Customer agrees that RapidRatings may, subject to applicable Government security requirements, monitor use of the API Services and API
Applications, for reasons including to ensure quality, improve RapidRatings products and services, and verify Customer’s compliance with the API Services Terms. Customer agrees to not interfere with this monitoring. RapidRatings may use any technical means to overcome any interference RapidRatings may encounter. For clarity, any provisions from the Customer Agreement regarding monitoring and audit rights expressly apply to the API Services.

2.2 Privacy Policy. Customer will comply with all applicable Federal privacy laws of the United States and regulations reasonably relating to the API Application including those applying to personally identifying information. Customer will provide and adhere to a privacy policy for the API Application that clearly and accurately describes what information is collected, how it is used, and that it is shared with third parties (and for what purposes it is shared with third parties), including RapidRatings if applicable.

2.3 Ownership. By using RapidRatings API Services, Customer does not acquire ownership of any rights to the API Services or the content that is accessible through the API Services, or their reliability, availability, or security or ability to meet Customer’s needs. The API Services and content. Customer acknowledges that RapidRatings may develop products or services that may compete with the API Applications or any other products or services. Some of the software required by or included in RapidRatings’ API Services, or provided in a good-faith effort to assist Customer (e.g. code stubs, configuration tools), may be offered under an open source license or other license. These licenses constitute separate written agreements, and Customer should consult the appropriate Documentation. RapidRatings makes no representation or warranty for any third-party tools. If Customer provides Feedback regarding the API Services, then RapidRatings may use such information without obligation to Customer, per the Customer Agreement. Customer agrees to not misrepresent the source or ownership of the API Services. When the API Services or data or document content are displayed through any end point device, whether web-based, mobile, print or audio, this content must have the attribution, “All data and analysis provided by Rapid Ratings International.” and, if the display is visual, the RapidRatings logo as provided by RapidRatings. RapidRatings will work with Customer to provide logos appropriate for Customer’s delivery endpoint format and user experience. All use by Customer of RapidRatings trademarks (including any goodwill associated therewith) will inure to the benefit of RapidRatings. Customer shall not remove, obscure, or alter any copyright, trademark, or other proprietary rights notices; or falsify or delete any author attributions, legal notices, or other labels of the origin or source of material. Except as expressly stated, these API Services Terms do not grant either party any right, title, or interest in or to the other party’s trademarks.

2.4 Linking. The API Services data must be displayed per the API Services Documentation, which RapidRatings reserves the right to update, modify, or change from time to time. Any third-party company name or data point displayed in the API Application using the API Services must be linked to a RapidRatings client portal. For example, if a link is provided with the RapidRatings FHR® data point, Customer will hyperlink the FHR data to the discrete URL provided.

Section 3. Communications.

3.1 Communication of Changes. RapidRatings may send Customer notices in connection with use of the API Services. These may contain important API Services changes that RapidRatings may make at its sole discretion that require action by Customer for uninterrupted API Services or Subscription Services access. While RapidRatings will work to ensure Customer is notified in advance of any such changes, Customer is responsible for evaluating whether API Services changes affect the API Application. Customer is solely responsible for in and to the API Services reacting to these notices. RapidRatings makes no representation that API Services changes will not affect or disrupt the API Application. Any updates to this agreement or the API Services Terms or Documentation shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating the terms. If RapidRatings issues a new version of the API Services, Customer must update their API Services and RapidRatings will continue to support and maintain the previous version for no more than six (6) months. If Customer does not agree to the changes or updates, Customer should discontinue use of the API Services.

3.2 Confidential Communications. Customer credentials (such as passwords, keys, and client IDs) are intended to be used by Customer and to identify Customer’s organization (entity), API Application, and other potentially unique or personally identifying information. Customer will use industry best practices and efforts to keep credentials confidential and to prevent and discourage other API clients from using Customer’s credentials. RapidRatings’ communications to Customer and RapidRatings’ API Services contain RapidRatings Confidential Information, pursuant to the Customer Agreement.

3.3 Reporting Requirements. Customer is responsible for providing reports to RapidRatings that disclose the usage of the API Services ("Reporting Requirements") upon the request of RapidRatings. The Reporting Requirements may be met by submission of at least the following information: a) time/date(s) of access/use, b) frequency of access/use, and c) what content has been accessed. The Reporting Requirements may be automated for delivery of such information to RapidRatings. The technical details of this procedure and a preferred format for the submission of information will be provided in the API Services Documentation.

Section 4. Warranties, Limitation of Liability.

IN ADDITION TO THE WARRANTIES AS PER THE CUSTOMER AGREEMENT ABOVE, NEITHER RAPIDRATINGS NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE API SERVICES OR ANY CONTENT ACCESSED THROUGH OR TRANSMITTED TO THE API SERVICES, THE SPECIFIC FUNCTIONS OF THE API SERVICES, OR THEIR RELIABILITY, AVAILABILITY, OR SECURITY OR ABILITY TO MEET CUSTOMER’S NEEDS. THE API SERVICES AND CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE". Customer represents and warrants that Customer will not violate the API Services Terms. The limitations on liability in the GSA Schedule Contract expressly apply to these API Services Terms.

Section 5. Indemnity.

The indemnity obligations in the GSA Schedule Contract expressly apply to these API Services Terms.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Red Hat, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800:2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included in the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or itsbonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

RED HAT, INC.

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**RED HAT ENTERPRISE AGREEMENT**

**U.S. GOVERNMENT SUPPLEMENT**

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This U.S. Government Supplement ("Supplement"), the attached Red Hat Enterprise Agreement (extracted from www.redhat.com/licenses/us.html on January 3, 2018), with the applicable product appendix ("Enterprise Agreement"), establish the terms and conditions enabling Red Hat, Inc. ("Red Hat") to provide Red Hat products to U.S. Government agencies, including an "Ordering Activity," defined as an entity authorized to order under GSA contracts as set forth in GSA Order 4800.21 ADM, as amended (the "Client"). The applicable product appendices are listed below:


The Enterprise Agreement and this Supplement cover the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity does not constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follows:

1.0 Enterprise Agreement Section 2.2, Changes to Work and Delays, is replaced with the following: "2.2 Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties consistent with GSAR Clause 552.23881 Modification (Federal Supply Schedule) (APR 2014) (Alternate I – JUN 2016) or GSAR 552.238-81 Modification (Federal Supply Schedule) (APR 2014) (Alternate II – JUN 2016). In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party’s reasonable control cause a delay in or otherwise affect Red Hat’s ability to perform its obligations under an Order Form. Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services subject to GSAR Clause 552.238-81, as applicable, and GSAR 552.212-4(f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).

2.0 Enterprise Agreement Section 3.0 Fees:
The following is deleted from Section 3.1, Fees and Expenses: “Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services.”

Section 3.2.1 is replaced with the following: If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat’s acceptance of the applicable Order Form and upon acceptance of any future order in accordance with GSAR 552.212-4(g) and GSAR 552.212-4(i). Unless otherwise specified in an Order Form and subject to Red Hat’s approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable.

Section 3.3, Taxes, is deleted in its entirety.

3.0 Enterprise Agreement Section 5.0, Reporting and Inspection:
The following is deleted from Enterprise Agreement Section 5.1, Reporting, “no later than thirty (30) days from the date of the invoice”, and replaced with, “as provided in the Agreement”.

Enterprise Agreement Section 5.2, Inspection, is replaced with the following: “5.2 Inspection. During the term of this Agreement and for one (1) year thereafter: (a) If Client’s security requirements are met, Red Hat or its designated agent may inspect Client’s facilities and records to verify Client’s compliance with this Agreement. Any such inspection will take place only during Client’s normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Client security requirements are not met and upon Red Hat’s request, Client will run a self-assessment with tools provided by and at the direction of Red Hat ("Self-Assessment") to verify Client’s compliance with this Agreement. Within thirty (30) days from Red Hat’s request, Client will finalize the Self-Assessment and provide Red Hat with the results in the form of a written report certified by Client’s authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Client will make payment to Red Hat or its authorized channel partner for the applicable Services provided with respect to the underreported Units. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

4.0 Enterprise Agreement Section 6, Term and Termination:
Enterprise Agreement Section 6.1 is replaced with the following: “6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of all Forms issued hereunder.”

Enterprise Agreement Section 6.2.1: The following is deleted: “Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice of its intention not to renew at least sixty (60) days before the commencement of the next renewal term.”

Enterprise Agreement Section 6.2.2 is replaced with the following: “6.2.2 Termination shall be governed by the GSAR 552.212-4 (l) Termination for the Government’s Convenience, and (m) Termination for Cause. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat and consistent with GSAR 552.212-4 (l) Termination for the Government’s Convenience, and (m) Termination for Cause, in the event an Order Form is terminated, Client
will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination.”

5.0 Enterprise Agreement Section 8.1: The following is added to the end of Section 8.1, Limitation of Liability: “..., EXCLUDING REPROCUREMENT COSTS. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.”

6.0 Enterprise Agreement Section 9.1: The following is added to Section 9.1, Obligations: “Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552.”

7.0 Enterprise Agreement Section 11, Open Source Assurance Program, is deleted in its entirety.

8.0 Enterprise Agreement Section 12, Governing Law/Consent to Jurisdiction, is replaced with the following: “12. Governing Law/Consent to Jurisdiction. The validity, interpretation and enforcement of this Agreement, including end user license agreement and Software, shall be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.”

9.0 Enterprise Agreement Section 13 Miscellaneous

Enterprise Agreement Section 13.2, Assignment is replaced with the following: “13.2 Assignment. Assignments are subject to GSAR 552.212-4(x)(w)(ii) Non-assignment, FAR 52.232-23, Assignment of Claims and FAR 42.12 Novation and Change-of-Name Agreements.”

Enterprise Agreement Section 13.4, Force Majeure is replaced with the following: “13.4 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to GSAR 552.212 -4 (f) Excusable delays.”

Enterprise Agreement Section 13.5, Non-solicitation, is replaced with the following: “13.5 Reserved.”

The following is added to Enterprise Agreement Section 13.7, Dispute Resolution. “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued;” and replaced with, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than six (6) years after the cause of action has accrued.”

The following is deleted from Enterprise Agreement Section 13.11, Complete Agreement, “of the State of New York and”.

10.0 Enterprise Agreement Section 14, Waiver of Jury Trial, is deleted in its entirety.

11.0 Red Hat Products purchased under the Enterprise Agreement and this Supplement may require access to certain Red Hat websites or portals covered by “terms of use” (e.g., https://access.redhat.com/site/help/terms_conditions.html) (“Red Hat Portal Terms of Use”). In the event of any conflict between this Red Hat Terms of Use and this Supplement, this Supplement will take precedence. In the event Red Hat Terms of Use include terms requiring Client to indemnification obligation of Client, such indemnification obligations shall be deleted and the remaining terms and conditions shall be interpreted so as to be consistent with U.S. federal law.

Red Hat Enterprise Agreement - US License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM RED HAT. BY USING RED HAT SOFTWARE OR SERVICES, CLIENT SIGNSITIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE RED HAT SOFTWARE OR SERVICES. This Agreement incorporates those appendices at the end of this Agreement. This Red Hat Enterprise Agreement, including all referenced appendices and documents located at URLs (the “Agreement”), is between Red Hat, Inc. (“Red Hat”) and the purchaser or user of Red Hat software and services who accepts the terms of this Agreement (“Client”). The effective date of this Agreement (“Effective Date”) is the earlier of the date that Client signs or accepts this Agreement or the date that Client uses Red Hat’s software or services.

1. Scope of Agreement

1.1 Framework. This Agreement establishes a framework that will enable Red Hat to provide Software and Services to Client. “Software” means Red Hat Enterprise Linux, JBoss Enterprise Middleware and other software programs branded by Red Hat, its Affiliates and/or third parties including all modifications, additions or further enhancements delivered by Red Hat. The specific services (the “Services”) and/or Software that Red Hat will provide to Client will be described in an Order Form, signed by the parties or otherwise accepted by Red Hat, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through Red Hat's online store accessible from a Red Hat website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing.
1.2 Affiliates. Red Hat and Client agree that Affiliates of Client may acquire Software and Services from Red Hat or its Affiliates by entering an Order Form with Red Hat (or a Red Hat Affiliate) that incorporates the terms and conditions of this Agreement. The parties agree that adjustments or changes to this Agreement may be made in a particular Order Form (for example, to address disparate tax and/or legal remedies in other geographic regions). “Affiliate” means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where “control” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.3 Business Partners. Red Hat has entered into agreements with other organizations (“Business Partners”) to promote, market and support certain Software and Services. When Client purchases Software and Services through a Business Partner, Red Hat represents that it is responsible for providing the Software and Services under the terms of this Agreement. Red Hat is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client. Business Partners.

2. Obligations of the Parties

2.1 On-Site Obligations. If Red Hat personnel are working on Client's premises (a) Client will provide a safe and secure working environment for Red Hat personnel, and (b) Red Hat will comply with all reasonable workplace safety and security standards and policies, applicable to Client's employees, of which Red Hat is notified in writing by Client in advance.

2.2 Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.

2.3 Assistance. Client may provide Red Hat access to Client information, systems, and software (“Client Information”), and resources such as workspace, network access, and telephone connections as reasonably required by Red Hat in order to provide the Services. Client understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Client Information provided to Red Hat may affect Red Hat's ability to Provide Services, and (b) if reasonable access to Client Information is not provided, Red Hat will be relieved from providing any Services dependent upon such access. Client will obtain any third party consents necessary to grant Red Hat access to the Client Information that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.

3. Payment

3.1 Fees and Expenses. Fees for the Services (the “Fees”) will be identified in an Order Form and are (a) due upon Red Hat's acceptance of an Order Form or, for renewal of Services, at the start of the renewal term, and (b) payable in accordance with Section 3.2. Fees are stated in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services. Client agrees to pay Red Hat the applicable Fees for each Unit. “Unit” is the measurement of Software or Service usage defined in the applicable Order Form. Any renewal of Subscription Services will be at the same price per Unit listed in the applicable Order Form. “Subscription Services” mean fee-bearing subscriptions for a defined period of time for a certain scope of Services.

3.2 Invoices

3.2.1 If Client desires credit terms with respect to the payment of Fees, Client will reasonably cooperate with Red Hat in establishing and periodically re-confirming Client's credit-worthiness. If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that Fees for professional services, training, training credits and other service credits are due prior to delivery. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable. Red Hat reserves the right to suspend or cancel performance of all or part of the Services and/or change its credit terms if actual payment has not been received within thirty (30) days of the invoice date.

3.2.2 If Client is paying by credit card, Client (a) authorizes Red Hat to charge Client's credit card for the Services and for the amount due at the time of renewal of Subscription Services, and (b) agrees to provide updated credit card information to Red Hat for renewal purposes.

3.3 Taxes. All Fees are exclusive of Taxes. Client will pay Red Hat an amount equal to any Taxes arising from or relating to this Agreement or an Order Form which are paid by or are payable by Red Hat. “Taxes” means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Red Hat. If Client is required to withhold or deduct any portion of the payments due to Red Hat, Client will increase the sum payable to Red Hat by the amount necessary so that Red Hat receives from the sum it would have received had Client made no withholdings or deductions.

4. License and Ownership

4.1 Software. Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form.

4.2 Freedom to Use Ideas. Subject to Section 9 and Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Red Hat, without an obligation to account, in any way Red Hat deems appropriate, including by or for itself or its clients or customers.

4.3 Marks. Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any Red Hat, Red Hat Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any Red Hat or Red Hat Affiliate trademarks.

5. Reporting and Inspection

5.1 Reporting. Client will notify Red Hat (or the Business Partner from whom Client purchased Software or Services) promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice, Client will include the number of additional Units and the date(s) on which such Units were first utilized. Red Hat (or the Business Partner) will invoice Client for the applicable Services for such Units and Client will pay for such Services no later than thirty (30) days from the date of the invoice.

5.2 Inspection. During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any noncompliance, including the number of underreported Units of Software or Services, and Client will have fifteen (15) days from the date of this notice to make payment to Red Hat.
Hat for the applicable Services provided with respect to the underreported Units. If Client underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Client paid, Client will also pay Red Hat for the cost of such inspection.

6. Term and Termination of Agreement

6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one party to the other. Termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Section 6.2 below.

6.2 Term and Termination of Order Form

6.2.1 The term of an Order Form begins on the date the Order Form is executed ("Order Form Effective Date") and continues for the term stated in the Order Form. Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. Client must use any other Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will be forfeited.

6.2.2 If Client or Red Hat materially breaches the terms of an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the other party may, by giving written notice of termination to the breaching party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 9 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat, in the event either party terminates an Order Form, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination.

6.3 Survival. If this Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5.2, 6.3, 7, 8, 9, 10.2, 12, 13.1, 13.5-13.14, and 14 of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

7. Obligations of Client

7.1 General Representations and Warranties.

Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to Red Hat's knowledge, Red Hat branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

8. Limitation of Liability and Disclaimer of Damages

8.1 Limitation of Liability. FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY RED HAT DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER SOFTWARE, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.

8.2 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXPRESS OR EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

9. Confidentiality

9.1 Obligations. During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Red Hat or Client ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

9.2 Exclusions. Confidential Information will not include information which: (i) is or later becomes publicly available without breach of any Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure; (iii) is independently developed by the Recipient; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

10. Representations and Warranties

10.1 General Representations and Warranties. Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to Red Hat's knowledge, Red Hat branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

10.2 Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE SERVICES, SOFTWARE AND ANY
HARDWARE ARE PROVIDED BY RED HAT “AS IS” AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITHRegulatory REQUIREMENTS, BE ERROR FREE OR THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.1, CLIENT’S EXCLUSIVE REMEDY, AND RED HAT’S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services.

11. Open Source Software Program

For Software that is Red Hat branded, purchases under this Agreement may entitle Client to participate in Red Hat’s Open Source Assurance Program which is described at www.redhat.com/rel/details/assurance/. The terms for this optional program are subject to a separate agreement which can be viewed at www.redhat.com/legal/open_source_assurance_agreement.html.

12. Governing Law/Consent to Jurisdiction

The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of New York without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Raleigh, North Carolina, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

13. Miscellaneous

13.1 Notices. Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses or facsimile numbers indicated in an Order Form; provided that any notice from Client to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Facsimile: (919) 754-3704.

13.2 Assignment. This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Business Partners in Sections 5.1 and 6.2.2, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties’ Affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party’s prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit; or (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party’s assets or stock.

13.3 Independent Contractor. Red Hat is an independent contractor and nothing in this Agreement or related to Red Hat's performance of any Order Form will be construed to create an employment or agency relationship between Client (or any Client personnel) and Red Hat (or any Red Hat personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. Red Hat may subcontract Services under an Order Form to third parties or Affiliates without the approval of Client; provided, however, that (a) subcontractors agree to protect Client Confidential Information, and (b) Red Hat remains responsible to Client for performance of its obligations hereunder.

13.4 Force Majeure. Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

13.5 Non-solicitation. Each party agrees not to solicit of Red Hat or to solicit from employees of Red Hat involved with the delivery of Services in connection with any Order Form during the term of and for twelve (12) months after termination or expiration of such Order Form; provided that Client may hire an individual employed by Red Hat who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

13.6 Export and Privacy. Red Hat may supply Client with technical data that is subject to export control restrictions. Red Hat will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client agrees to comply with all applicable export control restrictions. If Client breaches this Section 13.6 or the export provisions of an applicable end user license agreement for the Software, or any provision referencing these sections, Red Hat may terminate this Agreement and/or the applicable Order Form and its obligations for any reason without liability to Client. Client acknowledges and agrees to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.

13.7 Dispute Resolution. Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party’s rights. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

13.8 Headings. All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

13.9 Severability. If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

13.10 Waiver. The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

13.11 Complete Agreement. Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Software, this Agreement will take precedence unless otherwise expressly provided in the Order Form.
Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the State of New York and of the United States, without regard to any conflict of laws provisions. Any claim relating to the provision of the Services by Red Hat, its Affiliates or their respective personnel will be made against Red Hat alone.

13.12 Amendment. Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.

13.13 Counterparts and Facsimile Signature. In the event this Agreement is executed with signatures, this Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by facsimile and such signatures will be effective to bind the parties to all the terms contained in this Agreement.

13.14 United States Government End Users. The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement.

14. Waiver of Jury Trial
TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.
PRODUCT APPENDIX 1
SOFTWARE AND SUPPORT SUBSCRIPTIONS

This Product Appendix (which includes Exhibits applicable to specific Red Hat Products) contains terms that describe the parameters and govern your use of Software Subscriptions and Support Subscriptions. This Product Appendix does not apply to Red Hat hosted or on-line subscription offerings. When we use a capitalized term in this Product Appendix without defining it, the term has the meaning defined in the Agreement to which this Product Appendix applies, such as the Red Hat Enterprise Agreement. In the event of a conflict, inconsistency or difference between this Product Appendix and an Exhibit to this Product Appendix, the terms of the Exhibit control.

Red Hat may modify or update this Product Appendix either by posting a revised version of this Product Appendix at http://www.redhat.com/agreements, and/or by providing notice using other reasonable means. If you do not agree to the updated terms then, (a) the existing Product Appendix will continue to apply to Red Hat Products you have purchased as of the date of the update for the remainder of the then-current Subscription term(s); and (b) the updated or modified terms will apply to any new purchases or renewals of Red Hat Products made after the effective date of the updated terms.


1. SUBSCRIPTION SERVICES

1.1 Subscription Unit Definitions. Fees for Subscription Services are based on metrics that are referred to as “Units”. Table 1.1 below defines the various Units that are used to measure your use of Software Subscriptions. The specific Units that apply to the various Software Subscriptions are contained in the Order Form(s) applicable to your purchases and in the Exhibit(s).

Table 1.1

<table>
<thead>
<tr>
<th>Unit</th>
<th>Software Subscription Unit Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>API Call</td>
<td>Is one inbound message to your API backend server and a response, if any, from the server.</td>
</tr>
<tr>
<td>Core</td>
<td>Is (a) a physical processing core located in a CPU or (b) a virtual processing core within a virtual machine or supporting a container, in each case, that contains or executes the Software running for Production Purposes.</td>
</tr>
<tr>
<td>Core Band</td>
<td>A group of processing Cores (16 or 64).</td>
</tr>
<tr>
<td>Customer User</td>
<td>Your and your Affiliates’ third party end users with access to the Software.</td>
</tr>
<tr>
<td>Employee User</td>
<td>Your and your Affiliates’ employee users acting on your behalf (including your independent contractors and those of your Affiliates) who are able to access the Software.</td>
</tr>
<tr>
<td>Full Time Equivalent or FTE</td>
<td>The sum of (a) the total number of full time faculty plus one third of the part time faculty and (b) the total number of full time staff plus one half of the part time staff.</td>
</tr>
<tr>
<td>GB of RAM</td>
<td>A gigabyte of processing memory that contains or executes the Software.</td>
</tr>
<tr>
<td>Managed Node</td>
<td>Each Node managed by the Software. “Node” means a Virtual Node, Physical Node or other instance of software.</td>
</tr>
<tr>
<td>Module</td>
<td>Use of the Software to manage one System, Virtual Node or Physical Node.</td>
</tr>
<tr>
<td>Physical Node</td>
<td>A physical system which contains or executes all or a portion of the Software including, without limitation, a server, work station, laptop, blade or other physical system, as applicable.</td>
</tr>
<tr>
<td>Power IFL (Integrated Facility for Linux)</td>
<td>A processor core on an IBM Power system that is activated and contains or executes all or a portion of the Software.</td>
</tr>
<tr>
<td>Socket</td>
<td>A socket occupied by a CPU.</td>
</tr>
<tr>
<td>Socket-pair</td>
<td>Up to two Sockets.</td>
</tr>
<tr>
<td>Storage Band</td>
<td>An amount of Storage (measured in terabytes “TB” and/or petabytes “PB”), where “Storage” is the total capacity of storage available to each instance of the Software.</td>
</tr>
<tr>
<td>System</td>
<td>A system which contains or executes all or a portion of the Software including, without limitation, a server, work station, laptop, virtual machine, container, blade, node, partition, appliance or engine, as applicable.</td>
</tr>
<tr>
<td>System on a Chip or SOC(s)</td>
<td>A single integrated circuit that includes the major components of a computer and is generally recognized as a system on a chip.</td>
</tr>
<tr>
<td>System z IFL (Integrated Facility for Linux)</td>
<td>A mainframe CPU that is activated and contains or executes all or a portion of the Software.</td>
</tr>
<tr>
<td>vCPU</td>
<td>A physical CPU, in whole or in part, which is assigned to a virtual machine or container which contains or executes all or a portion of the Software.</td>
</tr>
<tr>
<td>Virtual Node or Virtual Guest</td>
<td>An instance of the Software executed, in whole or in part, on a virtual machine or in a container.</td>
</tr>
</tbody>
</table>

1.2 Use of Subscription Services.

(a) Basis of the Fees. While you have Subscriptions entitling you to receive Subscription Services for a Red Hat Product, you are required to purchase the applicable Software Subscriptions and Support Subscriptions in a quantity equal to the total number and capacity of Units of that...
Red Hat Product. For purposes of counting Units, Units include (a) non-Red Hat Products if you are using Subscription Services to support or maintain such non-Red Hat Products and (b) versions or copies of the Software with the Red Hat trademark(s) and/or logo file(s) removed.

(b) **Supported Use Cases.** Subscription Services are provided for Software only when used for Supported Use Cases as described in the Exhibits to this Product Appendix. The Supported Use Case(s) associated with a Red Hat Product also determine the type of Subscription that is required. If your use of any aspect of the Subscription Services is contrary to or conflicts with a Supported Use Case, you are responsible for purchasing the appropriate Subscription(s) to cover such usage. For example, if you are using a Red Hat Enterprise Linux Desktop Subscription on a System that is a server, you are obligated to purchase Red Hat Enterprise Linux Server Subscription Services.

(c) **Support Levels.** You agree not to use Software Subscriptions with support service levels (e.g. Standard and/or Premium) higher than the support levels (e.g. Self-support and/or Standard) you have purchased.

(d) **Transferring Subscriptions.** You may transfer, migrate or otherwise move Software Subscriptions provided you are accountable for the number and types of Units associated with the Software Subscriptions.

(e) **Scope of Use of Subscription Services.** The Agreement (including pricing) is premised on the understanding that you will use Subscription Services only for your internal use (which may include Affiliates). Your internal use may include running a web site and/or offering your own software as a service, provided that such use (a) does not include a distribution, sale or resale of any of the Subscription Services and (b) provides as the primary component of the web site or service a material value added application other than the Subscription Services. However, providing the Subscription Services to, or using them for the benefit of, a third party (for example, using Subscription Services to provide hosting services, managed services, Internet service provider (ISP) services, or third party access to or use of the Subscription Services) is a material breach of the Agreement.

(f) **Use by Contractors.** Subscription Services may be used by third parties acting on your behalf, such as contractors or outsourcing vendors provided such third parties agree to and comply with the terms of the Red Hat Cloud Access program as set forth in Section 3 below.

(g) **Unauthorized Use of Subscription Services.** Any unauthorized use of the Subscription Services is a material breach of the Agreement, such as (a) only purchasing or renewing Subscription Services based on one, but not all, of the total number of Units, (b) splitting or applying one Subscription Service to two or more Units, (c) providing Subscription Services (in whole or in part) to third parties, (d) using Subscription Services in connection with any redistribution of Software and/or (e) using Subscription Services to support or maintain any non-Red Hat Software products without purchasing Subscription Services for such use.

1.3 **Subscription Start Date.** Unless otherwise agreed in an Order Form, Subscription Services will begin on the earlier of the date you purchase or first use the Subscription Services.

1.4 **End User and Open Source License Agreements.** The Red Hat Products are governed by the EULAs set forth at www.redhat.com/licenses/eulas. Software Subscriptions and Subscription Services are term-based and will expire if not renewed. This Agreement establishes the rights and obligations associated with Subscription Services and is not intended to limit your rights to software code under the terms of an open source license.

1.5 **Red Hat Software Subscription Bundles.** Red Hat offers combinations of Software Subscriptions with complimentary feature sets and price discounts ("Bundle(s)"). The basis of the fees for these Bundles is the combined use of such Software Subscriptions on a single Unit. When any of the combined Software Subscriptions are used independently from the Bundle, the fees for such independent usage will be Red Hat’s standard fees associated with the Unit for the particular Software Subscription.

2. **SUBSCRIPTION SERVICE SUPPORT TERMS**

2.1 **Evaluations.** Red Hat may offer Evaluation Subscriptions for evaluation and not for Production Purposes. Evaluation Subscriptions may be provided with limited or no support and/or subject to other limitations. If you use the Evaluation Subscription(s) for any purpose other than evaluation, you are in violation of this Agreement and are required to pay the applicable subscription fees for such use in accordance with Section 1 above, in addition to any and all other remedies available to Red Hat.

2.2 **Support from a Business Partner.** If you purchase Software Subscriptions that include support provided by an authorized Red Hat Business Partner (not by Red Hat) then Section 2.3 does not apply to you and you should work with your Business Partner to obtain support services. Section 2.3 only applies if you have purchased Software Subscriptions with Support provided by Red Hat.

2.3 **Support from Red Hat.**

(a) **Development Support.** Certain Software Subscriptions include Development Support. "Development Support" consists of assistance with architecture, design, development, prototyping, installation, usage, problem diagnosis and bug fixes, in each case, for the applicable Software when used for Development Purposes. Requests for deployment and maintenance assistance and/or assistance for Production Purposes are not included within the scope of Development Support, but may be available on a consulting basis under the terms of a separate agreement.

(b) **Production Support.** Certain Software Subscriptions include Production Support. "Production Support" consists of assistance with installation, application testing, usage, problem diagnosis and bug fixes, in each case, for the applicable Software when used for Production Purposes. Production Support does not include assistance with (i) code development, system design, network design, architectural design, optimizations, tuning recommendations, development or implementation of security rules or policies, (ii) third party software made available with Red Hat Software, (iii) software on the supplementary, optional or Extra Packages for Enterprise Linux ("EPEL") channels and/or (iv) preview technologies.

(c) **Support Coverage.** Support is provided in the English language but may be available in other languages based on available resources. Red Hat does not provide support for (a) any underlying infrastructure or for any third party products; (b) Software that (i) you (or a third party) have modified or recompiled, (ii) is running on hardware or platforms that are not Supported Configurations or (iii) is not running in
its Supported Use Case. You are responsible for testing the Software before deploying it in your environment, backing up your systems on a regular basis and having those backups available if needed for support purposes. Except as otherwise expressly stated, Support does not include data migration or data recovery support.

(d) **Service Level Guidelines.** Red Hat will use commercially reasonable efforts to provide Support at one or more of the following support levels, depending on the Red Hat Product: Self-support, Standard or Premium, as set forth at https://access.redhat.com/support/offers/production/sla. After the initial response to a support request, Red Hat will provide status updates on the issue consistent with the update guidelines applicable to the Severity Level (which may be downgraded to a lower Severity Level during the course of resolving the support request) until the issue is resolved or the parties agree on an alternative update schedule.

(e) **Obtaining Support.** To receive Support, you must provide Red Hat with sufficient information to validate your entitlement to the relevant Support. Certain Support is provided only during Red Hat’s local standard business hours. You may contact Red Hat through your designated Support Contacts. You may designate up to the number of contacts described at https://access.redhat.com/support/offers/production/contacts based on the number of Standard and Premium Software Subscriptions you have purchased (other than for Academic Edition Customers with Campus Wide Subscriptions which are based on the number of FTEs).

2.4 Software Subscription Lifecycle. During the life cycle of Software, the scope of Software Maintenance and Support evolves and, after a number of years, we discontinue Software Maintenance and Support for older versions of Software. The life cycle for Software Maintenance and Production is described at https://access.redhat.com/support/policy/update_policies.html and, in certain instances, in the Exhibit(s). For certain versions of Software, you may purchase Extended Update Support (“EUS”) and/or Extended Life Cycle Support (“ELS”) Add-On Subscription(s) to extend your Subscription Services as further described at https://access.redhat.com/support/policy/updates/errata/. Provided EUS Subscriptions are included in certain Software Subscriptions.

3. CLOUD ACCESS: DEPLOYING SOFTWARE SUBSCRIPTIONS IN A PUBLIC CLOUD

3.1 Transferring Eligible Subscriptions to a Cloud. You may transfer Eligible Subscriptions for use in a Vendor’s Cloud under the Cloud Access program if you (a) complete the registration set forth at https://engage.redhat.com/forms/cloud-access-registration and (b) have a sufficient number of Eligible Subscriptions to transfer. For Eligible Subscriptions that you purchased for on-premises use and transfer to a Vendor’s Cloud, the Unit of measurement will be the Unit as set forth in the conversion table located at http://www.redhat.com/en/technologies/cloud-computing/cloud-access. For Eligible Subscriptions that were originally purchased for use in a Vendor’s Cloud, no conversion is required. The number of concurrent Units used under the Cloud Access program in the Vendor Cloud may not exceed the total number of Units (a) transferred from Eligible Subscriptions and/or (b) purchased for use in a Vendor Cloud. The transfer of Software Subscription(s) to a Vendor’s Cloud via Cloud Access does not change the start date or the duration of the original Software Subscription(s). This means that when your Software Subscription expires, your access to the Software Subscription in the Vendor’s Cloud will cease, unless renewed.

3.2 Public Cloud Terms of Service. Through the Cloud Access program, you may obtain access to Software images and/or updates to the Software, if and when available, either (a) via new images obtained from the Vendor’s Cloud or (b) from a Red Hat Portal. Certain information (such as Software related notices) may only be available to you via the Red Hat Portal. Payments to Red Hat for Software Subscriptions do not include any fees that may be due to the Vendor for the Vendor’s Cloud services. Red Hat is not a party to your agreement with the Vendor and is not responsible for providing access to the Vendor’s Cloud or performing any other obligations of the Vendor. The Vendor is solely responsible and liable for the Vendor’s Cloud. Red Hat may have a support relationship with the Vendor that enables Red Hat and the Vendor to collaborate and you consent to (i) Red Hat discussing your Software Subscriptions and related Support with the Vendor and (ii) Red Hat and the Vendor sharing information for the purpose of providing Services. Red Hat will provide Support to you for each Eligible Subscription pursuant to this Agreement. Certain software components or functionality of the Software contained in the original Software Subscription (or Add-on Subscription) may not be available or supported when used in the Vendor’s Cloud.

3.3 Public Cloud Terms of Service. Through the Cloud Access program, you may obtain access to Software images and/or updates to the Software, if and when available, either (a) via new images obtained from the Vendor’s Cloud or (b) from a Red Hat Portal. Certain information (such as Software related notices) may only be available to you via the Red Hat Portal. Payments to Red Hat for Software Subscriptions do not include any fees that may be due to the Vendor for the Vendor’s Cloud services. Red Hat is not a party to your agreement with the Vendor and is not responsible for providing access to the Vendor’s Cloud or performing any other obligations of the Vendor. The Vendor is solely responsible and liable for the Vendor’s Cloud. Red Hat may have a support relationship with the Vendor that enables Red Hat and the Vendor to collaborate and you consent to (i) Red Hat discussing your Software Subscriptions and related Support with the Vendor and (ii) Red Hat and the Vendor sharing information for the purpose of providing Services. Red Hat will provide Support to you for each Eligible Subscription pursuant to this Agreement. Certain software components or functionality of the Software contained in the original Software Subscription (or Add-on Subscription) may not be available or supported when used in the Vendor’s Cloud.

3.4 Vendor Specific Services. Vendors may offer other services, offerings or commitments related to their Clouds, which may include the provision of services by US only personnel, compliance with various legal regimes or other Vendor Cloud specific obligations. Notwithstanding what may be offered by a Vendor, the Software Subscriptions are not provided subject to the terms of those Vendor offerings, and any Vendor offerings solely relate to the Cloud itself and not to the Software Subscriptions operated on the Cloud. As between Red Hat and you, you are solely responsible for complying with any applicable export laws or regulations related to your use of the Software Subscriptions and you agree not to transmit information, data or technology governed by the International Traffic in Arms Regulations to Red Hat in the course of your use of the Software Subscriptions.

3.5 Vendor Termination. Red Hat may terminate the availability of a particular Vendor that offers Cloud Access with sixty (60) day notice, provided you may continue to use any Software Subscription for the remainder of the term of the Software Subscription on another Vendor’s Cloud or on your premises under the terms of this Agreement.

4. DEFINITIONS

“Add-On Subscriptions” are optional Software Subscriptions that may be purchased in addition to the base Software Subscription (e.g. a Red Hat Enterprise Linux Software Subscription).

“Cloud” means a Vendor’s hosted computing infrastructure that provides systems, virtual machines or container hosts to end users. “Cloud Access” is the Red Hat program that allows you to use Eligible Subscriptions in a Vendor’s Cloud under the terms set forth in Section 3.

“Development Purposes” means using the Software for development related tasks that are performed by a single-user acting in a standalone mode such as (a) an individual developer writing software code, (b) a single user performing prototyping or quality assurance testing, where neither involves any form of automated testing, multi-user testing and/or multi-client testing and (c) a user demonstrating software or hardware that runs with or on the Software.


“Evaluation Subscriptions” means Red Hat Products offered without charge solely for evaluation and not for Production Purposes or Development Purposes, including offerings described as evaluation, preview or beta.

“Product Appendix(ies)” means the specific terms applicable to the Red Hat Products posted at http://www.redhat.com/agreements or otherwise attached to or incorporated into an Order Form.

“Production Purposes” means using the Software (a) in a production environment, (b) generally using live data and/or applications for a purpose other than Development Purposes, (c) for any automated quality assurance or testing, multi-user quality assurance or testing, and/or multi-client quality assurance or testing and/or (d) for backup instances.

“Red Hat portal” means the Red Hat hosted delivery portal, such as Red Hat Customer Portal, Red Hat Container Catalog and/or Red Hat Update Infrastructure (“RHUI”) that provides Software Access and Software Maintenance.

“Red Hat Products” means Software, Subscription Services, and other Red Hat branded offerings made available by Red Hat.

“Software” means Red Hat branded software that Red Hat provides as part of a Red Hat Product.

“Software Access” means access to various Software versions if and when available.

“Software Maintenance” means access to updates, upgrades, corrections, security advisories and bug fixes for Software, if and when available.

“Software Subscription” means a Subscription that contains Software Access, Software Maintenance and Support.

“Stacking” (or “Stacked” or “Stackable”) means the use of more than one Subscription to account for the capacity of a System or Physical Node.

“Standard Business Hours” are listed at https://access.redhat.com/support/contact/technicalSupport.html.

“Subscription” means a time bound Red Hat Product offering, other than professional services.

“Support” means access to Red Hat support for issues relating to Software as described in Product Appendix 1.

“Supported Configuration(s)” means the supported Red Hat Product hardware and platform configurations that are listed at https://access.redhat.com/support/online/.

“Support Contact(s)” is a person authorized by you to open support requests and/or contact Red Hat support personnel.

“Support Subscriptions” means a Subscription that contains a specialized Support offering that is supplemental to Support provided in a Software Subscription.

“Subscription Services” means Red Hat offerings consisting of Software Access, Software Maintenance, Support and/or any other services associated with and during the term of a Subscription.

“Supported Use Case” means the manner and/or environment in which a particular Subscription(s) is used and supported as further defined in an applicable Exhibit.

“Vendor” means the Red Hat authorized third party from whom you purchase Cloud services and who is authorized by Red Hat to participate in this Cloud Access program.

EXHIBIT 1.A

RED HAT ENTERPRISE LINUX AND RELATED SOFTWARE SUBSCRIPTIONS

This Exhibit 1.A. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Enterprise Linux, Red Hat Virtualization, Red Hat OpenStack Platform product lines and related offerings.

1. Unit of Measure and Purchasing Requirements for Red Hat Enterprise Linux Server, Red Hat Virtualization and Red Hat OpenStack Platform

Table 1 sets forth the support level, Units of measure, capacity limitations, and stacking capabilities for various Red Hat Enterprise Linux Server, Red Hat Virtualization and Red Hat OpenStack Platform Software Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and other parameters described in Table 1 below.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Support Level</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Stackable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux Server (Physical or Virtual Nodes)</td>
<td>Standard or Premium</td>
<td>Physical Node or Virtual Node</td>
<td>Socket-pair for each Physical Node or 2 Virtual Nodes</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for SAP HANA (see Note 1 below)</td>
<td>Standard or Premium</td>
<td>Physical Node or Virtual Node</td>
<td>Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Virtual Datacenters (see Notes 2 and 3 below)</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>Unlimited Virtual Nodes running on a Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform (formerly known as Red Hat Enterprise Linux OpenStack Platform)</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>Unlimited Virtual Nodes running on a Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform for Atom</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>Unlimited Virtual Nodes running on a Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
</tbody>
</table>
Red Hat Enterprise Linux for Real Time
Red Hat Virtualization (see Note 4 below)
Red Hat Enterprise Linux with Smart Virtualization
Red Hat Enterprise Linux with Smart Virtualization for SAP Applications

<table>
<thead>
<tr>
<th></th>
<th>Standard or Premium</th>
<th>Physical Node</th>
<th>Socket-pair</th>
<th>N/A</th>
<th>Physical Node: Yes</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux for Power
Red Hat Enterprise Linux for Power with Smart Virtualization

<table>
<thead>
<tr>
<th></th>
<th>Standard or Premium</th>
<th>Power IFL</th>
<th>Up to 4 processor cores</th>
<th>N/A</th>
<th>Power IFL: Yes</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux for System z

<table>
<thead>
<tr>
<th></th>
<th>Standard or Premium</th>
<th>System z IFL</th>
<th>N/A</th>
<th>N/A</th>
<th>System z IFL: Yes</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux for Hyperscale

<table>
<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Physical Node</th>
<th>Band of SOCs</th>
<th>None</th>
<th>Physical Node: No</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux Server Entry Level (see Note 1 below)

<table>
<thead>
<tr>
<th></th>
<th>Self-support</th>
<th>Physical Node</th>
<th>Socket-pair</th>
<th>None</th>
<th>Physical Node: No</th>
</tr>
</thead>
</table>

Red Hat OpenStack Platform
Red Hat Enterprise Linux with Smart Virtualization

<table>
<thead>
<tr>
<th></th>
<th>Standard or Premium</th>
<th>Physical Node</th>
<th>Socket-pair</th>
<th>Unlimited Virtual Nodes running on a Socket-pair</th>
<th>Physical Node: Yes</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux for PRIMEQUEST (see Note 1 below)

<table>
<thead>
<tr>
<th></th>
<th>Premium</th>
<th>Physical Node</th>
<th>1-2 Sockets, 9 Logical Partitions</th>
<th>4 Sockets, 10 Logical Partitions</th>
<th>6 Sockets, 11 Logical Partitions or 8 Sockets, 12 Logical Partitions</th>
<th>Physical Node: No</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux Desktop

<table>
<thead>
<tr>
<th></th>
<th>Self-support, Standard or Premium</th>
<th>System</th>
<th>1 CPU Up to 8GB RAM</th>
<th>1 Virtual Guest</th>
<th>CPU: No</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux Workstation

<table>
<thead>
<tr>
<th></th>
<th>Self-support, Standard or Premium</th>
<th>System</th>
<th>2 CPU Unlimited RAM</th>
<th>1 Virtual Guest or 4 Virtual Guests</th>
<th>CPU: No</th>
</tr>
</thead>
</table>

Red Hat Enterprise Linux for Power
Red Hat Enterprise Linux Server Subscription
Red Hat Infrastructure for Academic Institutions - Site

<table>
<thead>
<tr>
<th></th>
<th>Standard or Premium</th>
<th>Full Time Equivalent (FTE)</th>
<th>1-2 Sockets</th>
<th>1 Virtual Guest</th>
<th>N/A</th>
</tr>
</thead>
</table>

Note 1: Each Physical Node supports a maximum number of four (4) virtual instances that may consist of Red Hat Enterprise Linux Virtual Nodes, Virtual Guests or any other guest operating system, provided containers do not count towards the maximum four (4) virtual instances.

Note 2: Please note that Red Hat Enterprise Linux for Virtual Datacenters Subscriptions do not include an entitlement for the host operating system.

Note 3: Please note a Red Hat Enterprise Linux for Virtual Datacenters Subscription is limited when deployed on Red Hat Enterprise Linux Servers to the four (4) virtual instances support limit per Note 1, provided that limitation does not apply when Red Hat Enterprise Linux for Virtual Datacenters is deployed on either Red Hat Virtualization or Red Hat OpenStack Platform.

Note 4: A Red Hat Virtualization Subscription comes with RHEV-Manager, which requires the purchase of an underlying Red Hat Enterprise Linux Subscription for each Unit (i.e., Physical Node or Virtual Node) running RHEV-Manager.

..a.1 2. Red Hat Enterprise Linux Server Add-Ons
Red Hat Enterprise Linux Server Subscriptions may be purchased with one or more optional Add-On Subscriptions. Add-On Subscriptions require a separate paid and active Software Subscription for each Unit that deploys, installs, uses or executes such Add-On. Each Unit of an Add-On Subscription (i) must match the Unit of Measure and capacity of the underlying Red Hat Enterprise Linux Unit and (ii) inherits the Support Level of the underlying Red Hat Enterprise Linux Unit. Add-On Subscriptions are not supported on Red Hat Enterprise Linux Subscriptions with a Self-support service level except Smart Management Add-Ons.

..a.2 3. Red Hat Enterprise Linux Server Supported Use Cases

Table 3

<table>
<thead>
<tr>
<th>Software</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux Server (see Note 1 below)</td>
<td>Supported only for server computing on Supported Configurations, including delivery of services to other logical or physical client or server systems and the execution of multiuser applications.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Power</td>
<td></td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Server for System z</td>
<td></td>
</tr>
</tbody>
</table>
Red Hat Enterprise Linux for Real Time

Supported only on systems running (a) operating environments identified at [www.redhat.com/mrg/hardware](http://www.redhat.com/mrg/hardware) as Red Hat Enterprise Linux for Real Time compatible and (b) hardware systems identified as Red Hat Enterprise Linux for Real Time certified at [https://hardware.redhat.com](https://hardware.redhat.com) will be supported.

Red Hat Enterprise Linux for PRIMEQUEST

Subscription Services are provided only on Fujitsu PRIMEQUEST systems.

Red Hat Enterprise Linux for SAP HANA

Subscription Services are provided only on Supported Configuration certified by SAP to run SAP’s HANA platform.

Red Hat Enterprise Linux for Hyperscale

Subscriptions Services are provided only on Supported Configuration in the form of a desktop or server separately.

Red Hat Enterprise Linux for Power with Smart Virtualization

Supported only on physical hardware solely to support virtual guests. Red Hat Virtualization is designed to run and manage virtual instances and does not support user-space applications. Red Hat Virtualization may be used as a virtual desktop infrastructure solution, however, the Subscription does not come with software or support for the desktop operating system. You must purchase the operating system for each instance of a desktop or server separately.

Red Hat Enterprise Linux for Grid Nodes

Supported only in a compute Grid where a “Grid” means a minimum of fifty (50) Socketpairs that are networked and managed to solve workloads with the following characteristics: (a) all the nodes in the group of systems have the same Red Hat Enterprise Linux configuration, (b) the group of systems is running a single application or is controlled by a single job scheduler, (c) the workloads are sent to the group of systems by a job scheduler, (d) the workloads are maintained in a single distributed application across the nodes in the group of systems, (e) the workloads are noninteractive, and (f) the production outage of the complete group of systems is defined as 30% of the nodes in the group of systems being unable to run the workload. This Supported Use Case does not include nodes running databases, web applications, load balancing, or file services.

Red Hat Enterprise Linux with Smart Virtualization

Supported on physical hardware solely to support virtual guests. Red Hat Enterprise Linux with Smart Virtualization is designed to run and manage virtual instances. The included Red Hat Enterprise Linux Software Subscription is supported solely when used as the host operating system with the Red Hat Enterprize Virtualization Hypervisor or when used as the guest operating system with virtual machines.


Supported only on active Standard and Premium level Red Hat Enterprise Linux Server Software Subscriptions.

### Software

<table>
<thead>
<tr>
<th>Software</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux Server used as a Virtual Guest</td>
<td>Virtual Guests may be pooled or shared on any other System that has a Software Subscription with the same (a) Support Level (Standard or Premium) and (b) number of Virtual Guests (1, 4 or unlimited Virtual Guests), provided that you do not exceed the total number of Virtual Guests associated with the underlying Software Subscriptions.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Disaster Recovery</td>
<td>Supported only on Systems or Physical Nodes used intermittently for disaster recovery purposes such as systems receiving periodic backups of data from production servers, provided those disaster recovery systems have the same Service Levels (as set forth in the Subscription Appendix, Section 2.3(d)) and configurations (e.g. Socket-pairs, Virtual Guests, Cores).</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Retail</td>
<td>Supported only on Systems used at retail store locations with the same application stack excluding any data center deployments.</td>
</tr>
<tr>
<td>Red Hat Virtualization</td>
<td>Supported on physical hardware solely to support virtual guests. Red Hat Virtualization is designed to run and manage virtual instances and does not support user-space applications. Red Hat Virtualization may be used as a virtual desktop infrastructure solution, however, the Subscription does not come with software or support for the desktop operating system. You must purchase the operating system for each instance of a desktop or server separately.</td>
</tr>
<tr>
<td>Product</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Desktop</td>
<td>Supported only on personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Red Hat Enterprise Linux Desktop does not include support for open source server applications (e.g., Apache, Samba, or NFS), testing and development purposes or to share data with peers. Each Red Hat Enterprise Linux Desktop Software Subscription includes one Smart Management Module, each to be used solely with a single Red Hat Enterprise Linux Desktop System.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Workstation</td>
<td>Supported only on personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Each Red Hat Enterprise Linux Workstation Software Subscription includes one Smart Management Module to be used solely with a single Red Hat Enterprise Linux Workstation System.</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform (Physical Node)</td>
<td>Supported only when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform or when used as the guest operating system with virtual machines created and managed with Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform (without OS)</td>
<td>Supported only when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform for Atom</td>
<td>Supported only when used on a Physical Node that is a server running an Intel Atom processor. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux – Academic Server</td>
<td>Supported only for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Enterprise Linux – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>). Note: When you use Red Hat Enterprise Linux – Academic Edition for non-qualified academic purposes as described above, standard Red Hat Enterprise Linux subscription rates apply.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Academic Desktop</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Academic Workstation</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Academic Site Subscription</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Developer Suite</td>
<td>Supported only for Red Hat Enterprise Linux Developer Suite for Development Purposes.</td>
</tr>
</tbody>
</table>

Note 1: The Red Hat Enterprise Linux Server Use Case applies to the Red Hat Enterprise Linux Server variants in this Table 3.

3.1 Red Hat Enterprise Linux Server – Atomic Host. Red Hat Enterprise Linux Server may be deployed using RPM package manager or in Atomic Host mode. Atomic Host mode is an optional image based delivery, deployment and updating mechanism designed to support container based environments. Each deployment of Red Hat Enterprise Linux, regardless of the method, constitutes a Unit.

3.2 Red Hat Enterprise Linux Desktop and Workstation Software Subscriptions
Production Support for Red Hat Enterprise Linux Desktop subscriptions is limited to Support Contacts that are helpdesk support personnel and not end users.

3.3 Red Hat Enterprise Linux Extended Life Cycle Support Software Subscriptions

(a) Limited Maintenance and Production Support. Red Hat Enterprise Linux ELS entitles you to receive Software Maintenance and Production Support for Severity 1 and 2 problems on x86 architectures, but only for a limited set of software components excluding those listed at [http://www.redhat.com/rhel/server/extended_lifecycle_support/exclusions/](http://www.redhat.com/rhel/server/extended_lifecycle_support/exclusions/). Red Hat Enterprise Linux ELS Software Maintenance is limited to those Software updates that Red Hat considers, in the exercise of its sole judgment, to be (a) critical impact security fixes independent of customer support requests and (b) selected urgent priority defect fixes that are available and qualified for a subset of the packages in specific major releases of Red Hat Enterprise Linux beyond the end of its regular production cycles. The Red Hat Enterprise Linux ELS stream will be maintained for an additional period of time immediately after the end-date of the regular production cycles of the relevant release as set forth at [https://access.redhat.com/support/policy/updates/errata/](https://access.redhat.com/support/policy/updates/errata/). Red Hat will only provide one code base for Red Hat Enterprise Linux ELS and will not make functional enhancements to versions of Red Hat Enterprise Linux during the ELS cycle.
(b) **Red Hat Enterprise Linux ELS Unsupported Components.** Red Hat Enterprise Linux ELS covers components supported prior to the end of the life cycle but does not cover the following (in addition to those noted in Section 3.3(a) above): (a) desktop applications, (b) Red Hat Cluster Suite, (c) content from the Extras channel (“Extras” is a set of content with a shorter life cycle) and (d) Independent layered or Add-on products such as Directory Server, Red Hat Satellite Server, or Scalable File System. Red Hat reserves the right to exclude additional packages.

(c) **Red Hat Enterprise Linux ELS Content Delivery.** Red Hat Enterprise Linux ELS Software Maintenance is delivered through separate Red Hat Portal base channels for the specific release and corresponding child channels if applicable. You must install a modified redhat-release package downloaded from Red Hat Portal to subscribe a Unit to a Red Hat Enterprise Linux ELS channel.

..a.3  

4. **Red Hat Enterprise Linux Developer Suite**

Red Hat Enterprise Linux Developer Suite provides an open source development environment that consists of Red Hat Enterprise Linux with built-in development tools, certain Red Hat Enterprise Linux Add-Ons, Red Hat Enterprise Linux for Real Time, Smart Management and access to Software Maintenance, but no Support. If you use any of the Subscription Services or Software associated with Red Hat Enterprise Linux Developer Suite for Production Purposes, you agree to purchase the applicable number of Units of the applicable Software Subscription.

..a.4  

5. **Red Hat Enterprise Linux Developer Workstation and Red Hat Enterprise Linux Developer Support Subscriptions**

For each paid, active Red Hat Enterprise Developer Workstation and/or Red Hat Enterprise Linux Developer Support Subscription, Red Hat will provide you with (a) access to the supported versions of Red Hat Enterprise Linux and updates through a Red Hat Portal; and (b) assistance for: (i) installation, usage and configuration support, diagnosis of issues, and bug fixes for Red Hat Enterprise Linux, but only for issues related to your use of Red Hat Enterprise Linux for Development Purposes and (ii) advice concerning application architecture, application design, industry practices, tuning and application porting (collectively, “Developer Support”).

The Red Hat Enterprise Linux Developer Workstation and Red Hat Enterprise Linux Developer Support Subscriptions do not include support for (a) modified software packages, (b) wholesale application debugging or (c) software included in the Red Hat Extras repository, supplementary channels, preview technologies or software obtained from community sites.

5.1 **Red Hat Enterprise Linux Developer Support Subscription Levels.** You may purchase Professional (two (2) business day response time) or Enterprise (four (4) Standard Business Hours response time) with web and phone support for an unlimited number of requests for Red Hat Enterprise Developer Workstation (one (1) System) and/or Red Hat Enterprise Developer Support Subscriptions (twenty-five (25) Systems).
EXHIBIT 1.B  
RED HAT MIDDLEWARE, OPENSIFHT & APPLICATION PLATFORM SOFTWARE SUBSCRIPTIONS

This Exhibit 1.B to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat JBoss Middleware, Red Hat OpenShift Container Platform and Red Hat Application Platform product lines.

1. Unit of Measure and Purchasing Requirements for Red Hat JBoss Middleware Software Subscriptions.
Table 1 sets forth the Units of measure, stacking capabilities and Supported Use Cases for various Red Hat JBoss Middleware Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 1.

1.1 Supplemental JBoss Software. During the term of a JBoss Middleware Software Subscription, you will receive access to certain additional Red Hat JBoss Middleware Software ("Supplemental JBoss Software"). The Software Access and Software Maintenance for Supplemental JBoss Software is for Development Purposes only and for up to twenty-five (25) users for each sixteen (16) Core Band or Socket-pair Subscription that you purchase. If you use the Supplemental JBoss Software for Production Purposes or for more than twenty-five (25) users, you agree to purchase the appropriate Software Subscriptions based on each such Unit that you use.

1.2 Supported JBoss Middleware Software. Using Red Hat JBoss Middleware Software Subscriptions, you can support software obtained from community sites without purchasing a corresponding Software Subscription for such community software, as long as you do not sign-on across a majority of the JBoss Middleware portfolio and are subject to the following terms:
(a) You will receive entitlements for Red Hat JBoss Core Services Collection in a quantity equal to the number of Cores of Red Hat JBoss Middleware Software Subscriptions you purchased (for Software Subscriptions where the Unit is a Core).
(b) You will receive entitlements to Red Hat JBoss Core Services Collection equal to sixteen (16) Cores for each Red Hat JBoss Middleware Software Subscription you purchase on a per socket-pair basis.
(c) Red Hat JBoss Web Server and Red Hat JBoss Web Server Plus Subscriptions (which only include the management components of the Core Services Collection) do not include Red Hat JBoss Core Services Collection.

1.3 Red Hat JBoss Core Services Collection. "Red Hat JBoss Core Services Collection" is a collection of components that provide common functionality (such as monitoring and management, load balancing, process control and single sign-on) across a majority of the JBoss Middleware portfolio and is subject to the following terms:
(a) During the term of a JBoss Middleware Software Subscription, you will receive entitlements for Red Hat JBoss Core Services Collection in a quantity equal to the number of Cores of Red Hat JBoss Middleware Software Subscriptions you purchased (for Software Subscriptions where the Unit is a Core).
(b) You will receive entitlements to Red Hat JBoss Core Services Collection equal to sixteen (16) Cores for each Red Hat JBoss Middleware Software Subscription you purchase on a per socket-pair basis.
(c) Red Hat JBoss Web Server and Red Hat JBoss Web Server Plus Subscriptions (which only include the management components of the Core Services Collection) do not include Red Hat JBoss Core Services Collection.

1.4 JBoss Middleware for OpenShift Container Platform. Red Hat JBoss Middleware Software Subscriptions in Table 1 include access to the Red Hat JBoss Middleware Software enabled for Red Hat OpenShift Container Platform (i.e. the Software described in Table 3 below ("JBoss OpenShift Enabled Software")). The JBoss OpenShift Enabled Software is supported when deployed on Red Hat OpenShift Container Platform, which requires a separate active paid Software Subscription. The capacity restrictions in Table 3 below apply to the Red Hat JBoss OpenShift Enabled Software. Red Hat JBoss Middleware Software Subscriptions listed in Table 1 are not configured for use with Red Hat OpenShift Container Platform.

1.5 Red Hat's Open Source Assurance Program applies only to the JBoss Middleware Software Subscription that you purchased and does not apply to Supplemental JBoss Software or JBoss OpenShift Enabled Software that may be provided (for no additional fee) with the Red Hat JBoss Middleware Subscription that you purchased.

Table 1
<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat JBoss Enterprise</td>
<td>Core Band</td>
<td>No</td>
<td>These Red Hat Products are only supported on Supported Configurations.</td>
</tr>
<tr>
<td>Application Platform</td>
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<td></td>
</tr>
<tr>
<td>Red Hat JBoss Web Server</td>
<td></td>
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<tr>
<td>Red Hat JBoss Web Server Plus</td>
<td></td>
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<tr>
<td>Red Hat JBoss Data Grid</td>
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<tr>
<td>Red Hat JBoss Fuse</td>
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<tr>
<td>Red Hat JBoss AMQ</td>
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<tr>
<td>Red Hat JBoss Data Virtualization</td>
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<tr>
<td>Red Hat JBoss BPM Suite</td>
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<tr>
<td>Red Hat JBoss BRMS</td>
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<tr>
<td>Red Hat JBoss Middleware</td>
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<tr>
<td>Add On-Extended Life Cycle</td>
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</tr>
<tr>
<td>Support</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Unit of Measure and Purchasing Requirements for Red Hat OpenShift Container Platform
Table 2 sets forth the Units of measure, capacity limitations, stacking capabilities and Supported Use Cases for various Red Hat OpenShift Container Platform Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 2. Red Hat OpenShift Container Platform for RHEL and Container Platform for RHEL are layered products and require a separate paid and active Software Subscription to Red Hat Enterprise Linux for Virtual Datacenters with matching Support Levels for each Unit that deploys, installs, uses or executes such layered products.
### Table 2

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat OpenShift</td>
<td>Virtual Guest</td>
<td>2 Cores</td>
<td>One Virtual</td>
<td>Cores: Yes</td>
</tr>
<tr>
<td>Container Platform</td>
<td>Virtual Guest</td>
<td>1 Virtual</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Red Hat OpenShift</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
</tbody>
</table>

Red Hat OpenShift Container Platform for RHEL and Container Platform for RHEL have the same characteristics.

3. **Unit of Measure and Purchasing Requirements for Red Hat JBoss Middleware for OpenShift Container Platform**

Table 3 sets forth the Units of measure, capacity limitations, and stacking capabilities for Red Hat JBoss Middleware for OpenShift Container Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 3. Red Hat OpenShift Container Platform Subscriptions are sold separately.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat JBoss Middleware for OpenShift Container Platform</td>
<td>Cores or Physical Nodes</td>
<td>Minimum of 16 Virtual Guests on 2 Cores or for Physical Node a Socket-pair</td>
<td>Cores: Yes Physical Nodes: Yes</td>
<td>These Red Hat Products are only supported on Supported Configurations, on OpenShift Container Platform, or on a combination of the two so long as you have a minimum of sixteen (16) Cores (for Virtual Guest) or a Socket-pair (for Physical Node).</td>
</tr>
</tbody>
</table>

4. **Unit of Measure and Purchasing Requirements for Application Platform Software Subscriptions**

Tables 4.1 and 4.2 set forth the Units of measure, capacity limitations, and Supported Use Cases for various Red Hat Application Platform Software Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in these Tables.

### 4.1 Red Hat 3Scale API Management Subscriptions

For purposes of calculating the total number of Units that you must purchase, you must include the number of API Calls generated in both Production Purposes and Development Purposes during traffic spikes.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat 3Scale API Management Platform On Premise</td>
<td>API Calls per day</td>
<td>Up to 2,000,000</td>
<td>The Subscription is supported (a) when used on a server, (b) on Supported Configurations, and (c) when used for the purpose of API Management. The OpenShift Container Platform Subscription provided with the Subscription Services is supported only in connection with use of the Red Hat 3Scale API Management Platform, On Premise Subscription.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Up to 5,000,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Up to 20,000,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Up to 50,000,000</td>
<td></td>
</tr>
</tbody>
</table>

### 4.2 Red Hat Mobile Application Platform

In connection with your Red Hat Mobile Application Platform Subscription Service, you will have access to an optional online service called the Red Hat Mobile Application Build Farm. Use of this optional online service is subject to the terms and conditions set forth at [www.redhat.com/licenses/buildfarm](http://www.redhat.com/licenses/buildfarm).

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Mobile Application Platform</td>
<td>API Calls per day</td>
<td>Up to 2,000,000</td>
<td>The Subscription is supported (a) when used on a server, (b) on Supported Configurations, and (c) when used for the purpose of API Management. The OpenShift Container Platform Subscription provided with the Subscription Services is supported only in connection with use of the Red Hat 3Scale API Management Platform, On Premise Subscription.</td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform</td>
<td>API Calls per day</td>
<td>Up to 5,000,000</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform</td>
<td>API Calls per day</td>
<td>Up to 20,000,000</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform</td>
<td>API Calls per day</td>
<td>Up to 50,000,000</td>
<td></td>
</tr>
<tr>
<td>Subscription Service</td>
<td>Unit Description</td>
<td>Supported Use Case</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>------------------</td>
<td>-----------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Employee, Unlimited</td>
<td>Employee User*</td>
<td>Unlimited Applications*** Support is provided for Software (a) when used on a System that is a server, (b) on platforms that are Supported Configurations and (c) that is within the supported Red Hat Mobile Application Platform Life Cycle. The OpenShift Container Platform Subscription that may be provided with the Subscription Services is supported only in connection with use of the Red Hat Mobile Application Platform</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Employee, Limited</td>
<td>Employee User*</td>
<td>Up to 5 Applications***</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Customer, Limited</td>
<td>Customer User**</td>
<td>Up to 5 Applications***</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Customer, Single Use Application</td>
<td>Customer User**</td>
<td>One Application***</td>
<td></td>
</tr>
</tbody>
</table>

*Note: The number of “Employee Users” is equal to the number of unique Employee Users who are able to access an Application(s), regardless of whether the Employee User(s) actually access or the frequency with which they access the Application(s).

**Note: The number of “Customer Users” is equal to the number of unique monthly active Customer Users who actually access an Application(s) in a calendar month regardless of the frequency with which they access the Application(s).

***Note: For purposes of counting “Applications”: (1) an Application is comprised of a project of various components dedicated to a single purpose regardless of the number of mobile operating systems on which it is provisioned or the number of other applications to which it may be connected and (2) only live production Applications are counted.
## EXHIBIT 1.C
### RED HAT STORAGE SUBSCRIPTIONS

This Exhibit 1.C to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Gluster Storage, Red Hat Ceph Storage product lines and related offerings. References to “Red Hat Storage Subscriptions” refer to both product lines.

1. **Unit of Measure and Purchasing Requirements.**

   Table 1 sets forth the support level, Unit of measure, stacking capabilities and Supported Use Case for various Red Hat Storage Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and other parameters described in Table 1 below. In addition, the following terms apply:

   (a) Red Hat Gluster Storage includes management tools to manage one or more instances of Red Hat Gluster Storage.

   (b) Red Hat Ceph Storage Software Subscriptions are priced based on the total amount of storage capacity. Each Red Hat Ceph Storage Software Subscription supports up to a certain number of Physical Nodes or Virtual Nodes. Should the number of Physical or Virtual Nodes be consumed before the Storage Band capacity is reached, you may upgrade to the next Storage Band to receive additional Physical or Virtual Nodes.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Support Level</th>
<th>Unit of Measure</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Gluster Storage</td>
<td>Standard or Premium</td>
<td>Physical Node or Storage Band</td>
<td>Yes</td>
<td>Red Hat Gluster Storage is intended to be used as a storage system and will be supported only when used as a storage node. These Subscriptions are not supported on non-server hardware such as desktops or workstations and are intended for use on a dedicated Physical Node; running other applications and/or programs of any type on the Physical Node can have a negative impact on the function and/or performance of the Subscription. Each Subscription includes one Software Subscription to Red Hat Enterprise Linux Server and the Scalable File System Add-on, which are supported solely in connection with the use of the respective Red Hat Storage Subscription. Red Hat Gluster Storage Module does not include a Red Hat Enterprise Linux Software Subscription which must be purchased separately.</td>
</tr>
<tr>
<td>Red Hat Gluster Storage Module</td>
<td>Standard or Premium</td>
<td>Physical Node or Storage Band</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Red Hat Ceph Storage</td>
<td>Standard or Premium</td>
<td>Physical Node or Storage Band</td>
<td>Yes</td>
<td>Red Hat Ceph Storage is intended to be used as a storage system and will be supported only when used as a storage node. When running in Amazon Web Services, an EC2 M1 Large dedicated instance is required in order to be supported. Running other applications and/or programs of any type on the same instance can have a negative impact on the function and/or performance of the Red Hat Gluster Storage for Public Cloud and is not a Supported Use Case.</td>
</tr>
<tr>
<td>Red Hat Gluster Storage Pre-Production</td>
<td>Standard</td>
<td>Physical Node or Storage Band</td>
<td>No</td>
<td>These Pre-Production Subscriptions are subject to the same Use Case as provided in the description for Red Hat Ceph Storage and Red Hat Gluster Storage, provided that Support is only provided for Pre-Production Purposes (defined below).*</td>
</tr>
<tr>
<td>Red Hat Ceph Storage Pre-Production</td>
<td>Standard</td>
<td>Physical Node or Storage Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat Gluster Storage for Public Cloud</td>
<td>Standard or Premium</td>
<td>Virtual Node</td>
<td>Yes</td>
<td>Red Hat Gluster Storage for Public Cloud is intended to be used as a storage system and will be supported only when used as a storage node. When running in Amazon Web Services, an EC2 M1 Large dedicated instance is required in order to be supported. Running other applications and/or programs of any type on the same instance can have a negative impact on the function and/or performance of the Red Hat Gluster Storage for Public Cloud and is not a Supported Use Case.</td>
</tr>
<tr>
<td>Red Hat Gluster Storage for Red Hat OpenStack Platform</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>No</td>
<td>This Subscription is intended to be used as a storage system with Red Hat OpenStack Platform and will be supported only when used as a storage node. It is not supported on non-server hardware such as desktops or workstations and is intended for use on a dedicated Physical Node; running other applications and/or programs of any type on the Physical Node can have a negative impact on the function and/or performance.</td>
</tr>
<tr>
<td>Red Hat Hyperconverged Infrastructure</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>No</td>
<td>Red Hat Hyperconverged Infrastructure is only supported when used as an integrated compute plus storage infrastructure. These Software Subscriptions are supported on server hardware but not on desktops or workstations. Support is provided for groups of 3 Nodes, which is the minimal deployment.</td>
</tr>
</tbody>
</table>
Container Storage Add
On for OpenShift
Container Platform

<table>
<thead>
<tr>
<th>Standard or Premium</th>
<th>Physical Node or Virtual Node</th>
<th>No</th>
</tr>
</thead>
</table>

This Subscription is only supported when used as a (a) storage system with Red Hat OpenShift Container Platform, (b) container inside OpenShift Container Platform or (c) storage node outside OpenShift Container Platform. The Subscription is supported on server hardware but not on desktops or workstations and is intended for use on a dedicated Physical Node or as containers inside OpenShift Container Platform clusters.

Red Hat Gluster Storage – Academic Edition

<table>
<thead>
<tr>
<th>Standard or Premium</th>
<th>FTE</th>
<th>n/a</th>
</tr>
</thead>
</table>

Red Hat Storage – Academic Edition Subscriptions are supported for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Storage – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at http://ope.ed.gov/accreditation/Search.aspx). Note: When you use Red Hat Enterprise Linux – Academic Edition for non-qualified academic purposes as described above, standard Red Hat Enterprise Linux subscription rates apply.

Red Hat Ceph Storage – Academic Edition

<table>
<thead>
<tr>
<th>Standard or Premium</th>
<th>FTE</th>
<th>n/a</th>
</tr>
</thead>
</table>

"Pre-Production Purposes" consists of assistance with issues relating to the installation, configuration, administrative tasks and basic troubleshooting of the Red Hat Ceph Storage or Red Hat Gluster Storage Software components prior to deployment in a production environment, but it does not include architectural design reviews or advice, advanced configuration topics, performance analysis or reviews.

**RED HAT INTEGRATED SOLUTIONS**

This Exhibit 1.D. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Integrated Solutions product lines.

1. **Unit of Measure and Purchasing Requirements.** Table 1 sets forth the Unit of measure and Supported Use Cases for Red Hat Cloud Infrastructure Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and Supported Use Cases described in Table 1 below. A Red Hat Cloud Infrastructure Software Subscription comes with a Red Hat CloudForms Software Subscription but if you are managing any virtual machines with the Red Hat Cloud Infrastructure Subscription that are not running on the same Physical Node as the active Red Hat CloudForms Software Subscription, you must purchase additional Red Hat CloudForms Subscriptions for such use.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Cloud Infrastructure</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat OpenStack Platform or when used as the guest operating system on virtual machines created and managed with this Subscription. Red Hat Virtualization is supported solely when used to run and manage virtual guests for this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat OpenStack Platform. If the Red Hat Cloud Infrastructure product contains an entitlement for Satellite, Satellite is only supported for managing Physical Nodes within the Red Hat Cloud Infrastructure private cloud.</td>
</tr>
<tr>
<td>Red Hat Cloud Infrastructure (without guest OS)</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat OpenStack Platform. Red Hat Virtualization is supported solely when used to run and manage virtual guests for this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat OpenStack Platform. If the Red Hat Cloud Infrastructure product contains an entitlement for Satellite, Satellite is only supported for managing Physical Nodes within the Red Hat Cloud Infrastructure private cloud.</td>
</tr>
</tbody>
</table>
Red Hat Cloud Suite | System | Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat Cloud Suite or when used as the guest operating system on virtual machines created and managed with this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat Cloud Suite.

## MANAGEMENT SUBSCRIPTIONS

This Exhibit 1.E. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Satellite, Red Hat CloudForms, Red Hat Ansible product lines and related offerings.

### 1. Red Hat Satellite, Red Hat Capsule and Smart Management

#### 1.1 Units of Measure and Purchasing Requirements

You must purchase the appropriate number and type of Red Hat Management Subscriptions based on the Unit and Supported Use Cases described in Table 1 below.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Satellite, Red Hat Satellite Capsule and Red Hat Satellite Proxy System</td>
<td>Red Hat only provides Subscription Services for Red Hat Satellite, Red Hat Satellite Capsule or Red Hat Satellite Proxy when used on a System or Physical Node that is a server.</td>
<td></td>
</tr>
<tr>
<td>Red Hat Satellite Capsule System</td>
<td>Red Hat only provides Subscription Services for Red Hat Satellite Capsule and Red Hat Satellite Proxy when deployed with Red Hat Satellite.</td>
<td></td>
</tr>
<tr>
<td>Red Hat Smart Management Module</td>
<td>Red Hat Smart Management entitlements are required for each Unit of Red Hat Enterprise Linux that is managed by Red Hat Satellite Capsule, Red Hat Satellite Proxy and/or Red Hat Satellite. Red Hat Smart Management entitlements may be used with Red Hat Portal directly.</td>
<td></td>
</tr>
<tr>
<td>Red Hat Satellite Starter Pack Module</td>
<td>Red Hat does not provide Subscription Services for Red Hat Satellite Starter Pack if at the time of renewal, more than 50 Units (whether Systems, Physical Nodes and/or Virtual Nodes) are managed.</td>
<td></td>
</tr>
</tbody>
</table>

Stacking capabilities and Supported Use Cases for various Red Hat Management Subscriptions. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 2. For Virtual Nodes managed by CloudForms in a CloudForms enabled public cloud, you need to purchase Units equal to either (at your option), (a) the actual number of Units or (b) the average daily maximum Virtual Nodes managed by CloudForms in the previous 365 days. If 365 days of usage history is not available, you may use the average usage history period that is available. If managing Virtual Nodes on a public cloud, you must confirm that a specific public cloud is Red Hat CloudForms enabled.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Stackable</th>
<th>Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat CloudForms</td>
<td>Managed Node: (Physical Node or Virtual Node)</td>
<td>Socket-pair for each Physical Node or Sixteen (16) Virtual Nodes</td>
<td>Physical Node: Yes Virtual Node: Yes</td>
<td>Red Hat only provides Subscription Services for Red Hat CloudForms Software when deployed on (a) a System or Physical Node that is a server and (b) Virtual Nodes if they are running on-premise or on a Red Hat CloudForms enabled public cloud. Red Hat Enterprise Linux is the only supported operating system for Red Hat CloudForms Subscriptions.</td>
</tr>
</tbody>
</table>

### 3. Red Hat Ansible Tower and Red Hat Ansible Engine Subscriptions

The Red Hat Ansible Tower offering consists of the Red Hat branded graphical application and REST API, designed for use with (i) Red Hat Ansible Engine or Ansible Project Software. Red Hat Ansible Tower does not include the Ansible Project. “Ansible Engine” means the installed package, which consists of the connection plugins, inventory plugins, fact plugins, Ansible-playbook language and directives, core modules, and other miscellaneous core or plugins provided in the package. “Ansible Project Software” means the community version of the Ansible deployment and configuration management engine.

Red Hat Ansible Engine Subscriptions provide access to additional software components (Certified Components and Community Components) with varying levels or no support as set forth at https://access.redhat.com/articles/3166901 (“Ansible Support Matrix”). “Certified Components” means third party components listed on the Ansible Support Matrix and maintained by such third party. “Community Components” means components (e.g., modules, plugins...etc.) that are created and submitted by community members. Red Hat will provide limited assistance for Certified Components solely to the extent required to run Red Hat Ansible Engine and/or Red Hat Ansible Tower Software but otherwise does not provide Support or Software Maintenance for Certified Components or Community Components.

#### 3.1 Units of Measure and Purchasing Requirements

Table 3 sets forth the Unit of measure and Supported Use Cases for Red Hat Ansible Engine and Red Hat Ansible Tower Software. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 3 below.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Case</th>
</tr>
</thead>
</table>
3.2 Data Analytics. Red Hat Ansible Tower Software versions 2.4 or later may collect and transmit usability data (including information identifying the source of that data) to Red Hat. Red Hat intends to use the data to enhance future releases of the Red Hat Ansible Tower Software and help streamline customer experience and success. Usability data includes information such as dashboard items clicked in the Tower Software, amount of time spent on individual pages and paths taken throughout the Red Hat Ansible Tower Software. Usability data is collected and transmitted to Red Hat via a javascript file that is downloaded to a customer’s web-browser. The collection and transmission of such usability data is optional and you may (a) completely opt-out by editing the Red Hat Ansible Tower Software configuration and restarting the Red Hat Ansible Tower Software, or (b) choose between two opt-in scenarios: (i) “anonymous mode” that will provide usability data to Red Hat without any information identifying the source of that data, or (ii) “detail mode” that will provide usability data with the customer name to Red Hat. For Red Hat Ansible Tower Software (versions 2.4 or later) you may opt-out from usability data collection and transmission by following the directions found at: http://docs.ansible.com/ansible/tower/latest/html/administration/usability_data_collection.html.


3.4 Red Hat Ansible Engine Networking Add-On

Red Hat Ansible Engine Networking Add-On provides Support to networking modules listed on the Ansible Support Matrix. You are required to purchase a Unit of Red Hat Ansible Engine Networking Add-On for each Red Hat Ansible Engine Software Subscription (regardless of the number of Managed Nodes). Red Hat Ansible Engine Networking Add-On Subscription is only supported on Red Hat Ansible Engine Subscriptions with Premium support.

4. Red Hat Insights. Red Hat Insights is an optional Add-On hosted service designed to help you proactively identify and resolve technical issues in Red Hat Enterprise Linux and Red Hat Cloud Infrastructure environments. Table 4

..a.1 5. Red Hat Directory Server Software Subscriptions

Table 5 sets forth the Unit of measure and Supported Use Cases for Red Hat Directory Server. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 5 below. The Service Level(s) for Directory Server is determined by the Service Level of the underlying Red Hat Enterprise Linux Subscription for the System, Physical Node or Virtual Node running Directory Server (for example, if the Service Level for the underlying Red Hat Enterprise Linux Software Subscription is Premium, then Directory Server would receive Premium level support).

![Table 5](image)

EXHIBIT 1.F

SUPPORT SUBSCRIPTIONS

This Exhibit 1.F. to Product Appendix 1 contains terms that describe the parameters and govern your use of TAM Services.

..a.2 1. Technical Account Management (“TAM”) Service

The TAM Service is a Support Subscription that you may purchase in addition to your underlying Standard or Premium Software Subscription in order to receive enhanced Support. The TAM Service does not include support for (1) Self-support Software Subscriptions,
(2) any Unit of Software (such as a System, Physical Node, Core, etc.) for which you do not have an active paid Software Subscription or (3) any Software Subscription for which support is provided by a Business Partner. When you purchase a TAM Service, you receive access to a Red Hat support engineer to provide you with (a) access to Red Hat’s technology and development plans, including beta testing and bug/feature escalation, (b) weekly review calls, (c) up to two (2) on-site technical review visits per year, (d) up to four Support Contacts, (e) quarterly service performance metrics via the TAM electronic dashboard, and (f) a subscription to Red Hat’s TAM monthly newsletter.

<table>
<thead>
<tr>
<th>Support Subscription</th>
<th>Unit Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAM Service TAM Extension</td>
<td><strong>Point of Contact:</strong> a Red Hat associate whom you are authorized to contact to request support for a particular team, geography or Red Hat product line.</td>
</tr>
</tbody>
</table>

1.1 **TAM Service Coverage.** Each TAM Service Subscription will be limited to certain parameters (that is, a region, a customer team and/or a product line) and will be listed in the Order Form and, if not listed, the TAM parameters will be established upon the initiation of the TAM Service.

(a) **Regions:** North America, Latin America, EMEA, Asia-Pacific (excluding Japan, China and India), China, India or Japan.
(b) **Customer Team:** The customer team supported by the TAM, such as your development team, your system administration team, your support team, etc.
(c) **Red Hat Product Line:** The supported Red Hat product line, such as the Red Hat Enterprise Linux, Red Hat JBoss Middleware, Red Hat Mobile Application Platform, OpenShift, Red Hat Storage, Ansible or Red Hat Cloud product lines.

1.2 **TAM Service Level.** The TAM Service is offered during local Red Hat Support Standard Business Hours as set forth at [https://access.redhat.com/support/contact/technicalSupport.html](https://access.redhat.com/support/contact/technicalSupport.html) (based on the physical location of the TAM representative). If you have purchased Premium Red Hat Software Subscriptions, you will receive 24x7 Support for Severity 1 and 2 issues through Red Hat’s 24x7 Production Support teams and not necessarily from your assigned TAM representative. Red Hat’s 24x7 Production Support team will be responsible for addressing issues, but will consult with your TAM representative, as your TAM representative is available, for advice and to gain a better understanding of your infrastructure, environment and specific needs. If you have purchased multiple TAM Service Subscriptions in each of Red Hat’s primary Support Regions, you will receive the benefit of extended TAM Service coverage hours, but you should follow the same process and contact the Red Hat 24x7 support numbers at [https://access.redhat.com/support/contact/technicalSupport.html](https://access.redhat.com/support/contact/technicalSupport.html).

1.3 **TAM Extension Service.** The TAM Extension Service is an extension of a Red Hat Enterprise Linux TAM Service to provide additional technical knowledge such as SAP implementations on Red Hat Enterprise Linux. The TAM Extension Service requires a separate active and paid standard TAM Service Subscription.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Riverbed Technology, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
i) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentation of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiations, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentation of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
RIVERBED TECHNOLOGY, INC.

RIVERBED TECHNOLOGY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. These terms and conditions (“Attachment A”) shall apply to the sale or license of Products or Services from Contractor to the customer on the applicable Order (“Ordering Activity”). This Attachment A constitutes the agreement between Contractor and Ordering Activity with respect to such Products and Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between the parties. "Products" are Riverbed's currently generally available products, including hardware, software and documentation, listed on Contractor’s GSA price list. "Services" means Riverbed's currently generally available
available maintenance and support services and any professional services listed on Contractor’s GSA price list or that are otherwise sold to Ordering Activity hereunder. “Software” means machine readable software provided by Riverbed, whether incorporated into or provided for use in or with a hardware Product or provided as a Product separate from any hardware (whether initially, as part of maintenance or support or otherwise), and any related documentation.

2. Ordering Activity will purchase from Contractor the Products and/or Services by submitting a written purchase order to Contractor (an “Order”). The terms and conditions of this Attachment A will apply to the Order and supersede any different or additional terms on Ordering Activity’s purchase orders. The Products and Services are not for resale.

3. Contractor warrants to Ordering Activity that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Contractor warrants to Ordering Activity that the Products, upon original shipment by Contractor, will conform in all material respects to the applicable published specifications for such Products for a period of one (1) year with respect to hardware and ninety (90) days with respect to Software from the date of original shipment by Contractor of the nonconforming Product (but not replacements). Products obtained from Contractor that do not comply with the warranty and are returned by Ordering Activity to Contractor during the warranty period (and for which a Contractor through Riverbed RMA has been issued) will be repaired or replaced at Contractor's option. Contractor will bear the cost of freight and insurance for return of goods to Ordering Activity. If Contractor cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid by Ordering Activity therefor will be credited to Ordering Activity. Contractor MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS. The above warranty does not extend to any Product that is modified or altered, is not maintained to Riverbed's maintenance recommendations, has its serial number removed or altered or is treated with abuse, negligence or other improper treatment (including, without limitation, use outside the recommended environment). Ordering Activity’s remedy with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above.

4. Any Software is not sold, but rather is licensed pursuant to the applicable Riverbed license agreement, Exhibit A herein, that governs use of the Software solely for Ordering Activity’s internal use in or with that Product strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable, non-sublicensable and does not include the right to (and Ordering Activity will not modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or use the software or Product for the benefit of any third party. If a Product is provided to any unit or agency of the United States Government (“U.S. Government”), the following provisions shall apply: All software and accompanying documentation are deemed to be commercial, including computer databases, related documentation, technical data and manuals as defined in FAR 2.101. Therefore, pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms herein.

Subject to Ordering Activity’s compliance with all terms of this Attachment A and payment of Contractor’s support and maintenance fees for the level of Riverbed support purchased (i.e., Silver Gold, or Platinum Level), Contractor through Riverbed will provide its then standard corresponding support and maintenance Services, the current version of which is located under Exhibit C herein (“Support Services”). Contractor through Riverbed will not provide, and Ordering Activity will not request, any Support Services for any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Ordering Activity will not escalate calls to Contractor through Riverbed for Support Services nor install updates, upgrades, bug fixes or the like on any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Contractor obligations under any Support plan with respect to any Product is subject to payment of applicable Support fee’s. The purchase or renewal of Support for any Product purchased by Ordering Activity requires the purchase or renewal of Support for all Products purchased by Ordering Activity. Riverbed retains ownership of any intellectual property resulting from Services. Ordering Activity may renew Support by submitting an Order for Renewal of that Support. Ordering Activity may purchase additional Support for a Product that provides for (1) to five (5) years of support subject to Riverbed’s end of sale policy at www.riverbed.com/supportpolicy. If Ordering Activity purchases Support for a Product that provides for more than one year of support, the support period in excess of one year may be cancelled by Ordering Activity at any time without cause by providing written notice to Contractor, and any unused, prepaid amount (reduced by the amount of any additional discount provided because Ordering Activity purchased more than one (1) year of Support) will be refunded to Ordering Activity within 45 days of Contractor’s receipt of such written notice. For example, if Support is cancelled after one year of a three year period, Contractor will refund two years of prepaid, unearned support. All obligations of Contractor to provide support services will be terminated on receipt of the cancellation notice.

EXHIBIT A – LICENSE AND PRODUCT WARRANTY TERMS

1. LICENSE GRANT. Subject to the terms of this Attachment A and provided Ordering Activity has paid the applicable fees, Contractor hereby grants Ordering Activity a limited, personal, non-sublicensable, non-transferable, nonexclusive license to use or access the Product solely for Ordering Activity’s internal business use in accordance with the Riverbed documentation that accompanies it and any other use restrictions applicable for that Product, including without limitation any additional use restrictions set forth as Exhibit B herein. Except as expressly set forth in Exhibit B herein, Ordering Activity may use each licensed copy of the Software only as embedded in or for execution on a specific unit (or replacement thereof) of Riverbed hardware (“Hardware”) owned or leased by Ordering Activity (including any units of replacement Hardware provided as part of warranty or support services). Ordering Activity may copy configurations of the Software solely for backup purposes. Without granting any additional licenses hereunder, Ordering Activity may authorize its contractors and outsourcers to use or operate the Products solely on Ordering Activity’s behalf and provided Ordering Activity obtains such third parties’ binding consent to abide by the terms of this Attachment A and provided Ordering Activity shall be responsible for such parties’ use and compliance. Such parties are not, and shall not be deemed to be, third party beneficiaries under this Attachment A for any reason. See Exhibit B for any additional Product or service specific use rights or restrictions or limitations.

2. LICENSE RESTRICTIONS. Except as permitted by this Attachment A, Ordering Activity shall not, nor authorize anyone else to, directly or indirectly: (i) copy, modify, or distribute the Product; (ii) reverse engineer, disassemble, decompile or attempt to discover the source code or structure, sequence and organization of the Product (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited); (iii) rent, lease, or use the Product for timesharing or service bureau purposes for third parties, or otherwise use the Product on behalf of any third party; or (iv) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking."
activities. Notwithstanding anything to the contrary herein, Ordering Activity may utilize the Software pursuant to a leasing arrangement whereby the Ordering Activity leases the Product from a third party. Ordering Activity shall maintain and not remove or obscure any proprietary notices on the Product. As between the parties, title of and all ownership rights in the intellectual property rights in and to the Software, and any copies or portions thereof, shall remain in Riverbed and its suppliers or licensors. The Software is protected by the copyright laws of the United States and international copyright treaties. This Attachment A does not give Ordering Activity any rights not expressly granted herein.

3. GOVERNMENT USE. If Ordering Activity is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and documentation qualify as "commercial items" "commercial computer software" and "commercial computer software documentation." In accordance with such provisions and as such any use of the Product or documentation by the Government shall be governed solely by the terms of this Attachment A. All other use is prohibited.

4. SUPPORT AND UPGRADES. This Attachment A does not entitle Ordering Activity to any support, upgrades, patches, enhancements or fixes for the Product (collectively, "Support"). Ordering Activity must make separate arrangements for Support and pay any fees associated with such Support. Any software upgrades, patches, enhancements or fixes provided as part of Support for the Software that may be made available by Contractor through Riverbed shall become part of the Software and subject to this Attachment A. The terms of Riverbed’s standard support services are located under Exhibit C herein.

**Product Warranty Statement**

STANDARD WARRANTY, WARRANTY DISCLAIMER. Contractor warrants only to Ordering Activity that the Products, when shipped by Contractor, will conform in all material respects to the applicable published specifications for such Products. Such warranty does not apply to units that have been damaged, mishandled, mistreated or used or maintained or stored other than in conformity with such specifications and Contractor’s instructions.

EXCEPT FOR THE FOREGOING, ORDERING ACTIVITY'S REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF OR (AT CONTRACTOR'S OPTION OR IF REPAIR OR REPLACEMENT IS IMPRACTICAL) REFUND OF THE FEES RECEIVED BY CONTRACTOR FOR RETURNED NON-CONFORMING UNITS OF PRODUCT FOR WHICH FULL DOCUMENTATION AND PROOF OF NON-CONFORMITY IS PROVIDED TO CONTRACTOR (AND FOR WHICH A SUPPLIER RMA HAS BEEN ISSUED) WITHIN ONE YEAR IN THE CASE OF HARDWARE COMPONENT, OR NINETY DAYS IN THE CASE OF SOFTWARE (WHETHER OR NOT EMBEDDED). AFTER THE ORIGINAL NON-CONFORMING UNITS (BUT NOT REPLACEMENTS) ARE SHIPPED BY CONTRACTOR. SUCH REFUND SHALL BE PAID TO THE ORDERING ACTIVITY MAKING THE WARRANTY CLAIM. EXCEPT FOR THE FOREGOING, CONTRACTOR PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS ATTACHMENT A. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY. THE PRODUCT IS NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR EMERGENCY COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL.

**EXHIBIT B – ADDITIONAL USE RIGHTS**

1. The following additional terms apply to any Riverbed products designated as a “spare” or “cold spare”:

   If a Riverbed product is being provided as a “spare” or “cold spare” as identified at the time of sale or on Contractor’s GSA price list (“Spare”), then such Spare is provided solely as a replacement unit and is not supplied for independent productive use. Ordering Activity agrees to use only Spares solely for replacement of a fully licensed product that is no longer operational and has been disconnected from Ordering Activity’s network and power supply. Ordering Activity must contact Riverbed Support to transfer any applicable support service plans from the fully licensed product to the Spare. Upon replacement, the Spare shall become a fully licensed product subject to this Attachment A terms, whereupon the product removed from production shall become a Spare. Any use by Ordering Activity contrary to the foregoing is prohibited.

2. The following additional terms apply to any Riverbed products designated as a “lab unit” or “lab product” or “development license”:

   If a Riverbed product is being provided as a “lab unit”, “lab product” or “development license” as identified at the time of sale or on Contractor’s GSA price list (“Lab Unit”), then such Lab Unit is provided solely for Ordering Activity’s internal lab testing and not in a production environment. Lab Units may not be resold or transferred or used for the benefit of any third party. Any use by Ordering Activity contrary to the foregoing is prohibited.

3. Steelhead Mobile client software:

   Steelhead Mobile client software may be copied onto Ordering Activity’s laptops or other personal computers, provided that the total number of concurrent users does not exceed the number of concurrent user licenses acquired by Ordering Activity.

4. CMC-VE software:

   Each instance of CMC-VE software licensed by Ordering Activity may be (a) installed on a single server or cluster of servers operating as a single entity running a supported operating system or computing platform and used in production to manage Riverbed devices, and (b) installed on a single backup server or cluster of backup servers operating as a single entity running a supported operating system or computing platform and used only if the primary server or server cluster specified in (a) above fails. Only one copy of a single CMC-VE instance may be running or used at any time. Ordering Activity may use CMC-VE software instance(s) purchased by Ordering Activity to manage Riverbed devices only up to the total number of CMC-VE management licenses purchased by Ordering Activity, and CMC-VE management licenses can only be used with a single CMC-VE instance at a time. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes. For Ordering Activities who are using CMC-VE software to manage Riverbed devices used to deliver a
managed or outsourced service to its end customers, such CMC-VE software may not be resold, transferred, sublicensed or distributed to the end customer, and each instance of such CMC-VE software may be used to manage Riverbed devices for only one end customer.

5. Virtual Steelhead software:

Each instance of Virtual Steelhead software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Virtual Steelhead instance may be running or used at any time. Provided that the Virtual Steelhead software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Steelhead software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Steelhead software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Virtual Steelhead instance(s) purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

6. AirPcap, Pilot PE, Cascade Pilot, WiFi Pilot:

Each instance of Software may be installed on a single server or device and only one copy of a single software instance may be running or used at any time.

7. Whitewater:

Each instance of Virtual Whitewater software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Virtual Whitewater instance may be running or used at any time. Provided that the Virtual Whitewater software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Whitewater software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Whitewater software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use the Whitewater appliance and Virtual Whitewater instance(s) purchased by Ordering Activity to transmit data to and from designated service provider cloud environments up to the number of terabytes licensed by Ordering Activity from Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

8. Cloud Steelhead:

Each instance of Cloud Steelhead software licensed by Ordering Activity (a) may be installed in either a designated service provider cloud environment or at a Ordering Activity site, and may be used for the term of the license purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance, (b) includes access to Riverbed’s Cloud Portal and use of Riverbed’s Discovery Agent software, which may be used for the term of the license purchased by Ordering Activity, and (c) includes Riverbed’s then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. With respect to any instances of Cloud Steelhead software installed at a Ordering Activity site, such Cloud Steelhead software may only be used to optimize traffic between such Ordering Activity and the Ordering Activity’s designated service provider cloud environment and cannot be used solely to optimize traffic on such Ordering Activity’s network.

9. Stingray Aptimizer Software:

Each instance of the Stingray Aptimizer software licensed by Ordering Activity may be installed on a single server that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Use of each instance(s) purchased by Ordering Activity is limited to the type and scope of use licensed by Ordering Activity as specified in the applicable Product description as follows: (a) SharePoint Aptimizer software may be used to accelerate SharePoint, for the Ordering Activity’s internal intranet on a per seat basis, or the Ordering Activity’s external facing website up to a designed number of unique visitors per day, (b) Website Aptimizer software may be used to accelerate designated Ordering Activity websites, up to a designed number of unique visitors per day or on a per server basis. Provided that the software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

10. Stingray Traffic Manager and Application Firewall Software:

Each instance of Stingray Traffic Manager or Application Firewall software (including software and virtual appliances) licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Stingray instance(s) purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

11. Stingray Traffic Manager Software, Term License:

Each instance of Stingray Traffic Manager software licensed by Ordering Activity on a term basis may be installed in either a designated service provider cloud environment or at a Ordering Activity site installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the
“Licensed Server”), and may be used for the term of the license purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Each such instance includes Riverbed’s then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed.

EXHIBIT C – MAINTENANCE AND SUPPORT SERVICES

1. Software Maintenance
   a. Software Updates. Ordering Activity shall be entitled to receive, and Contractor through Riverbed shall provide Ordering Activity e-mail notification of, all maintenance releases, updates and upgrades to Product software as Riverbed, in its sole discretion, makes them generally available without additional charge to Riverbed’s Support Services Ordering Activities. The contents of all maintenance releases and updates shall be decided upon by Riverbed in its sole discretion. Ordering Activity may obtain updates by downloading the updates from Riverbed’s Support care website (support.riverbed.com). Product software maintenance releases and updates may only be installed on Products that are covered by then current support and maintenance services. Any such software provided by Riverbed shall be subject to this Attachment A.
   b. Supported Software. Contractor through Riverbed supports the current major release of Product software, plus certain prior versions of software in accordance Riverbed's support policy available at: www.riverbed.com/supportpolicy.
   c. Error Corrections. Contractor through Riverbed shall use its reasonable efforts to correct any reproducible programming error in the Product software attributable to Riverbed with a level of effort commensurate with the severity of the error, provided that Riverbed shall have no obligation to correct all errors in the Product software. Upon identification of any programming error, Ordering Activity shall notify Riverbed of such error and shall provide Riverbed with enough information to reproduce the error. Riverbed shall only be responsible for correcting errors that are (1) attributable to Riverbed and (2) reproducible by Riverbed on unmodified Product software as delivered to Ordering Activity.

2. Hardware Replacement
   a. Return Material Authorization. Before returning any Product, Ordering Activity must contact Riverbed Support and obtain a Return Material Authorization (RMA) number by calling the designated support telephone number or logging a request via the Support website. If Riverbed Support verifies that the Product is likely to be defective, Contractor through Riverbed will issue Ordering Activity an RMA number, which allows Ordering Activity to return the defective unit to Riverbed for repair or replacement.
   b. Shipping. Contractor through Riverbed cannot accept any Product without an RMA number on the package. Ordering Activity must deliver the defective Product along with a Product number to Riverbed. If Ordering Activity ships the Product on their own account, Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent); Ordering Activity may obtain updates to Product software as Riverbed, in its sole discretion, makes them generally available without additional charge to Riverbed’s Support Services Ordering Activities. Any such software provided by Riverbed shall be subject to this Attachment A.

Table 1: Service Contract Shipping Cost Responsibilities

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<thead>
<tr>
<th>Region</th>
<th>Silver</th>
<th>Gold</th>
<th>Gold Plus</th>
<th>Platinum</th>
<th>Dead on Arrival</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Riverbed</td>
<td>Customer</td>
<td>Riverbed</td>
<td>Customer</td>
<td>Riverbed</td>
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<tr>
<td>North America</td>
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<td></td>
<td></td>
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<tr>
<td>To Customer</td>
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<td>To Riverbed</td>
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<td>Latin America</td>
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<td>To Customer</td>
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<tr>
<td>To Riverbed</td>
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<td>x</td>
<td>x</td>
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<td>EU States</td>
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<tr>
<td>To Customer</td>
<td>x</td>
<td>x</td>
<td>x</td>
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<tr>
<td>To Riverbed</td>
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<td>Non EU States, MEA</td>
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<td>To Customer</td>
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<td>To Riverbed</td>
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<td>To Customer</td>
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<tr>
<td>To Riverbed</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>

c. Repair or Replace. Contractor through Riverbed may replace or repair the Product with either a new or reconditioned Product.
d. Dead on Arrival Products: For RMAs that are issued by Contractor through Riverbed within the first thirty (30) days after original Product shipment, Riverbed will ship a new (not refurbished) advance replacement unit via express delivery; such Product may be shipped from Riverbed’s manufacturing facilities. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm PST USA by Riverbed will be
shipped for next business day delivery, provided that special configurations may require additional time before a new replacement unit can be shipped; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

e. Silver-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed within the first ninety (90) days after original Product shipment, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations. For RMAs that are issued by Riverbed after the first ninety (90) days after original Product shipment, at Ordering Activity's request, Riverbed will ship a replacement unit within ten (10) business days via ground delivery once Riverbed confirms receipt of the defective unit at the shipping address designated by Riverbed at the time of RMA issuance.

f. Gold-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

g. Gold-Plus-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will deliver replacement Product to the applicable installation location within 4 hours, 24 hours per day, 7 days per week, provided that the delivery time may be greater than 4 hours based on the location, and 4 hour coverage may only be available during business hours in some locations. Please contact Riverbed to determine if Gold Plus support is available in your area, and if it is, the applicable Product delivery time. Riverbed will use reasonable endeavors to establish service spares close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Ordering Activity from Silver or Gold to Gold Plus support; Product delivery times may be impacted until such service spares are established. Gold Plus may not be available at the new location or the delivery time may be impacted.

h. Platinum-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will either (a) ship an advance replacement unit via express delivery, or (b) provide on-site Product repair or replacement within 4 hours, provided that the on-site response time may be greater than 4 hours based on the location. Please contact Riverbed to determine if on-site support is available in your area, and if it is, the applicable on-site response time. Riverbed will use reasonable endeavors to establish service spares and trained local field engineers close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Customer from Silver or Gold to Platinum support; on-site response times may be impacted until such service spares and local field engineers are established. If the Product is shipped to Ordering Activity for next business day delivery, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

3. Ordering Activity Support

a. Support Web Site. Contractor through Riverbed will provide Ordering Activity with technical support by the following methods: World Wide Web, email and telephone. Such support will include:

- Assistance related to questions on the installation and operational use of the Product;
- Assistance in identifying and verifying the causes of suspected errors in the Product; and
- Providing workarounds for identified Product errors or malfunctions, where reasonably available to Riverbed.

b. Support Web Site. Contractor through Riverbed may provide Ordering Activity with an authorized account to access Riverbed's Support Web Site. Riverbed may make available the following services through its Support web site:

- Product software releases that can be downloaded by Ordering Activity;
- Documentation for Product;
- Issuing trouble reports identified by Ordering Activity through Riverbed's Support website;
- Issuing suggestions for enhancements through Riverbed's Support website.

c. Telephone Support. Telephone support shall include Direct Hotline Support. Ordering Activity may contact Support directly 7x24 via telephone at 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381.

d. Special Services. Ordering Activity may request maintenance and support services not specifically provided for in this Attachment A.

4. Product Obsolescence

Riverbed's End of Sale and End of Support policy is available at: www.riverbed.com/supportpolicy.

5. Support Service Levels

A problem is defined as a situation where the software does not function as intended. The detail below defines priority levels of each problem type. Contractor through Riverbed will use commercially reasonable efforts to provide the service level responses included below.

Priority 1

- Definition: A catastrophic problem that severely impacts the Ordering Activity’s ability to conduct business. This may mean that the Ordering Activity’s systems and/or Product are down or not functioning and no procedural workaround exists.
- Riverbed Response: Contractor through Riverbed to respond within one (1) hour. The objective is to get the Ordering Activity back on line within 24 hours and to downgrade the problem severity accordingly. Efforts to isolate, diagnose, and deliver a
work-around or repair shall be continuous. When the severity level has been changed to “Priority 2” or “Priority 3,” the appropriate guidelines should be followed.

Priority 2
- **Definition:** A high-impact problem in which the Ordering Activity’s operation is disrupted but there is capacity to remain productive and maintain necessary business-level operations. The problem may require a fix be installed on the Ordering Activity’s system prior to the next planned commercial release of the software.
- **Riverbed Response:** Contractor through Riverbed to respond within four (4) hours following receipt of a call. Efforts to isolate, diagnose, and deliver a work-around or repair problems shall be continuous during business hours.

Priority 3
- **Definition:** A medium-to-low impact problem that involves partial loss of non-critical functionality. The problem impacts some operations but allows the Ordering Activity to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Ordering Activity’s operation.
- **Riverbed Response:** Contractor through Riverbed to respond within eight (8) hours following the receipt of a call. Action should be appropriate to the nature of the escalation.

Priority 4
- **Definition:** Minor problems: all other errors. This includes documentation errors. The inconvenience is slight and can be tolerated.
- **Riverbed Response:** Contractor through Riverbed to respond within the next business day following the receipt of a call during normal business hours. Riverbed’s support organization will respond in a manner appropriate to the nature of the call.

6. **Escalation Procedures**
   If problems are not responded to as targeted above, Ordering Activity may escalate the issue to appropriate Riverbed management personnel. Contractor through Riverbed provides systematic escalation management to Ordering Activity with current service plans. The Riverbed escalation process notifies levels of management throughout the life cycle of the technical issue. This ensures that the appropriate resources resolve outstanding technical problems as efficiently as possible.

<table>
<thead>
<tr>
<th>SEVERITY</th>
<th>NOTIFICATIONS</th>
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<tbody>
<tr>
<td></td>
<td>Escalation Engineer</td>
<td>Manager</td>
<td>Executive</td>
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<tr>
<td>1. Critical</td>
<td>Within 1 Hour</td>
<td>1 Hour</td>
<td>4 Hours</td>
</tr>
<tr>
<td>2. High</td>
<td>Within 4 Hours</td>
<td>8 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>3. Minor</td>
<td>Within 8 Hours</td>
<td>Weekly</td>
<td>N/A</td>
</tr>
<tr>
<td>4. Informational</td>
<td>Within 24 Hours</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

To escalate a case, email support@riverbed.com or call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381. A case follows this escalation path: Support Engineer to Local TAC Manager to Regional Support Director to Director of Support Operations to VP Support.

7. **Continuous Support Coverage**
   Regardless of where the case originates, Riverbed Support endeavors to solve the case when it is opened. The Support team uses a “follow the sun” process to hand-off cases between different Support Centers.

   For example, between Monday and Friday, 8 AM - 5 PM GMT, a case from Europe will be routed to the Amsterdam Support Center. After regular business hours in Europe, the case may be routed to the New York or San Francisco Support Center, when the Amsterdam office is closed. If the case remains open, it is passed back to the Amsterdam Support Center for the beginning of their next business day.

8. **Case Handling**
   Contractor through Riverbed is committed to ensuring Ordering Activity success and satisfaction. All support services professionals are rigorously trained on Riverbed products, their underlying technologies, and industry leading technical problem-solving methodologies. Case handling follows these steps:

   An Ordering Activity can open a case in one of the following ways:
   - call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381
   - send an email to support@riverbed.com
   - generate a ticket directly from the Riverbed Support web site support.riverbed.com

When Ordering Activities open a case, they should be prepared to provide the following:

- Serial number of hardware component with issue
- Detailed description of the problem
- Priority level and impact of the problem
- Indication of the activity that was being performed when the problem occurred
- Software version
- Configuration data

Once a case is submitted, the issue is assigned to an escalation engineer (“EE”). Every EE is trained to perform extensive
troubleshooting to quickly resolve the issue. All opened cases are tracked in Riverbed’s online support tracking system. While working to resolve an issue, the EE may need to access information on the Ordering Activity system relative to the failure, or may need to recreate the failure to get additional information. If the problem is related to the system configuration, the Ordering Activity may be asked to provide a network diagram and configuration information. If the Ordering Activity and the EE agree, the Ordering Activity may send log files or trace files to Riverbed through email or upload them to the Riverbed Support FTP site for further review.

Note: Any information sent to Riverbed to help resolve Ordering Activity problems is treated as confidential.

A case is closed when all parties agree the reported issue has been resolved. If the Ordering Activity issue is determined to be an enhancement, a Feature Request is entered into the Riverbed defect tracking system. A Feature Request is handled and processed by Product Management and Engineering.

Consistently improving quality of service is a very high priority within Riverbed. After closing a case, a survey is sent to the Ordering Activity asking for feedback as to how the case was handled and where Riverbed can improve. Ordering Activity Support managers and executives review the survey responses, and take action where appropriate. Individual entries in this survey may be shared on the Support website anonymously, but identifiable submitter details are not shared. Individual entries will not be used for marketing purposes. The sole purpose of these survey results is to evaluate and improve Riverbed services.

9. Restrictions
Ordering Activity is entitled to receive Support Services only on Products for which Ordering Activity has purchased Support Services; Support Services commence upon sale of the applicable Product by Riverbed. Contractor through Riverbed will not be obligated to provide any Support Services: (1) on Products that: (a) have been altered, modified, mishandled, or damaged, (b) have not been installed, operated, repaired, or maintained in accordance with Riverbed’s specifications, documentation and instructions, or (c) have been misused or operated outside of the environmental specifications for that Product; (2) where the problem relates to Ordering Activity’s or a third party’s network, systems, hardware, software, or other problem beyond the reasonable control of Riverbed; or (3) to any geographic location or to any customers in violation of applicable laws or regulations. Ordering Activity acknowledges and agrees that Riverbed’s ability to provide Support Services is dependent on Ordering Activity providing accurate Product installation location information, and any failure to do so may impact Riverbed's ability to provide the Support Services. Remote access to the Products on Ordering Activity’s network may be required to diagnose or resolve a support problem, and Ordering Activity’s failure to provide such access may impact Riverbed’s ability to resolve the support problem. Riverbed will not be responsible for any Product replacement or repair delays caused by Riverbed’s compliance with export/import laws and regulations. Riverbed’s obligations under any Support Service plan with respect to any Product is subject to Riverbed’s receipt of the applicable annual Support Services fee. Riverbed retains ownership of any intellectual property resulting from Support Services.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached **RSA Security** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

- **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

- **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

- **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

- **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

- **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

- **Equitable Remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

- **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

- **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

- **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**t) Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Operating Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding adversarial alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**RSA SECURITY**

**RSA SECURITY LICENSE, WARRANTY AND SUPPORT TERMS**

End User Software License Agreement
For Use with GSA Schedule 70
RSA Security LLC, located at 174 Middlesex Turnpike, Bedford, MA 01730 (“Licensor”), and ______________________________________________, with a principal place of business at

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1. DEFINITIONS.

A. “Documentation” means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.

B. “Products” mean “Equipment” (which is the hardware delivered by LICENSOR to Customer) and/or “Software” (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).

C. “Product Notice” means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp

D. “Software Release” means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.

E. “Eligible Ordering Activities” are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a “Customer”. Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.00, are referred to as “Executive Customers”. All other Eligible Ordering Activities are referred to as “Other Customers”.

2. LICENSE TERMS.

A. General License Grant. LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer’s internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer’s use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.

B. Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software’s relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

C. License Restrictions. All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer’s authorized internal use of the Software. Customer shall not, without LICENSOR’s prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form other than Customer’s employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

D. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

E. Audit Rights. LICENSOR shall have the right to audit Customer’s usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and Customer is not unreasonably interfered with Customer’s business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer non-compliant situations are subject to paragraph 2.F. Disputes.

F. Disputes. For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA’s with Other Customers are not subject FAR 52.212-4 (d) Disputes.

G. Remedies. Rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer’s prior written consent, nor shall Customer permit any third party to do the same.

H. Other License Terms. If a particular Product is provided with a “clickwrap” agreement included as part of the installation and/or download process, or a “shrinkwrap” agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which LICENSOR is not the licensor; and (ii) not prevail with regard to Products for which LICENSOR is the licensor.

3. PRODUCT WARRANTY.

A. Software Warranty. LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software will be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer’s requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

B. Warranty Duration. Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

C. Customer Remedies. LICENSOR’s entire liability and Customer’s exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR’s then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes.
licensor shall have no liability hereunder after expiration of the applicable warranty period.

D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR's control; (iii) installation, operation or use not in accordance with LICENSOR's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR's consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR of such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR's then current standard rates.

E. No Further Warranties. Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. IN SO FAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

4. Indemnity. LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or RSA Security LLC, and LICENSOR and/or RSA Security LLC shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR's opinion be likely to become, the subject of such a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make, use, sell, offer for sale, or distribute the Product, or (2) replace or modify such so that it becomes non-infringing. Customer's sole and exclusive remedy under this Section 4 is the replacement or modification of the Product in accordance with the requirements of this Section 4.

5. Limitation of Liability.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HERUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer's production systems. To the extent LICENSOR's liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

D. Limitation Period. Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

E. Suppliers. The foregoing limitations shall also apply in favor of LICENSOR's suppliers.

6. Export Control. The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, "Export Laws"). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

7. Term and Termination. This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

A. EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4(l). B. For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall survive.

8. Miscellaneous.

A. References. LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.
B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. This EULA and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.

D. Force Majeure. Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

E. Assignment. Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR’s prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

F. Governing Law. To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

G. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be signed on the respective dates indicated below.

Licensor: Licensee:
By: By:
Name (Print): Name (Print):
Title: Title:
Date: Date:
RSA SOFTWARE USE RIGHTS

RSA software products (“Software”) are licensed by RSA to customers who order 1) directly from RSA (“Direct End-Users”) under a signature-bearing agreement between RSA or the applicable EMC affiliate and the Direct End-User, 2) under the terms of an End-User License Agreement (“EULA”) that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software, or 3) through channel partners under the terms of a EULA that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software. The information in this Software Use Rights (“SUR”) document is provided to further define the license rights and limitations for Software products.

RSA Software is licensed via a Unit of Measure used to quantify the scope of license rights based on a particular licensing model for such RSA Software. Some Agreements, schedules, or quotes refer to the UOM as a “license unit” or such other similar term. Use of the RSA Software beyond the scope of the rights granted requires additional or modified license grants, and additional payment of applicable license and maintenance fees.

- **Appliance (APP).** An appliance is the Hardware provided to Customer which has been loaded with the RSA Software.

- **Central Processing Unit (CPU).** RSA Software licensed on a “per CPU” basis means the maximum number of CPUs upon which you may install and use this RSA Software. A CPU is a single central processing unit within a computer system.

- **Collector Device (CD).** RSA Software licensed on a “collector device” basis means the number of source devices and applications from which events are collected within the Customer environment. The Server is licensed to run a single instance on the RSA® enVision™ Appliance.

- **Concurrent (CNC).** RSA Software licensed on a “per concurrent User” or “per concurrent client connection” basis means the maximum number of Users or client connections that may concurrently use or access the RSA Software.

- **Database (DB).** RSA Software licensed on a “per Database” basis means the maximum number of Databases with which you may use the RSA Software. A “Database” is a data repository managed by a Server.

- **Events per Second (EPS).** RSA Software licensed on an “Events per Second” basis is defined as the number of events collected per second within the customer environment.

- **Field of Use (FOU).** RSA Software licensed on a “Field of Use” basis is licensed with a license restriction on a field of use, number of users, servers, platforms, or other restrictions. A “Field of Use” is defined as a license restriction as outlined in a Schedule, Quote, or Purchase Order subject to the terms and conditions of the Agreement.

- **File System (FS).** RSA Software licensed on a “per file system” basis means each file server to be encrypted. Separate licenses for production and development systems are required.

- **Instance (INST).** RSA Software licensed on a “per Instance” basis means the maximum number of individual installations of an RSA Software application, or “Instances,” you may use at the same time in a production environment. For each Instance of the RSA Software license hereunder for production use, the Customer will receive the right to use two (2) additional Instances in non-production use (including standby/development/disaster recovery). License fees for additional Instances (both production and non-production) will be quoted on request.

- **Number of Connections.** RSA Software licensed on a “Number of Connections” basis means the RSA Software is licensed per connection between each computer FIM connects to.
- **Server (SVR/SRVR).** RSA Software licensed on a “per server” basis means the maximum number of physical servers on which you may install and use the RSA Software.

- **User (USR).** RSA Software licensed on a “per User” basis (sometimes referred to as a per “seat”) basis means the maximum number of Users that may be authorized to use or access the RSA Software, regardless of whether such Users are actively using or accessing the RSA Software at any given time. Except as otherwise agreed in an applicable Agreement, Schedule, or Quote, “User” means your agents, employees, consultants, or independent contractors authorized by you to use the RSA Software on your behalf. RSA Archer® Software Specific USR qualifiers: Different categories of Users (USR) will apply for RSA Archer Software licensed on a per User basis (these do not apply where the RSA Archer Software is licensed on a per Instance (INST) basis).

- **Full Access User (USR-FAU).** Means a User with unrestricted access, with authority to create, update, and/or delete system entries, to all nine (9) core solutions of the RSA Archer Software including: Policy Management, Risk Management, Compliance Management, Incident Management, Vendor Management, Threat Management, Enterprise Management, Business Continuity, and Audit Management. This further includes unlimited User access to On-Demand applications, the Training and Awareness solution, Questionnaires, and Exchange Applications.*

- **Assessment User (USR-AU).** Assessment Users are authorized to use the RSA Archer Software for the purpose of conducting up to four (4) assessments each year using the following core solutions of the RSA Archer Software only: (i) Risk Management, (ii) Vendor Management, and/or (iii) Compliance Management Solutions. Assessment Users have authority to create, update, and delete system entries (subject to the foregoing limitations on accessible core solutions of the RSA Archer Software and frequency).*

- **Read-Only User (USR-ROU).** Read-Only Users may only access the following core solutions of the RSA Archer Software: (i) Policy Management, (ii) Training & Awareness, and/or (iii) Business Continuity Management Solutions. Read-Only Users are not permitted to create, update, and/or delete any system entries.*

* Please refer to the generally available product documentation for descriptions of the foregoing core solution components.

**ADDITIONAL INFORMATION**

Additional disclaimer applicable to RSA Archer Software: “RSA Security LLC and its affiliates explicitly disclaim any warranty or guarantee of the accuracy, currency, completeness, or adequacy, of the content provided herein, and shall in no event be liable for any loss, damage, liability, or expense suffered by any person in connection with reliance by that person on any such material or otherwise. In no event shall the inclusion of any of the content provided herein be construed as legal advice. INFORMATION PROVIDED AT THIS SITE IS PROVIDED ‘AS IS’ WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.”

Additional copyright information applicable to RSA Archer Software: “Portions Copyright © 2002 to 2010 Corporate Web Solutions Ltd./WebAvail Productions Inc.”

Additional terms applicable to RSA Archer Software: RSA may identify Customer for reference purposes and use Customer’s logo in its marketing material unless and until Customer expressly objects in writing.
**Restrictions on use of RSA SecurID solution:** For all purposes under the Agreement, token records to RSA SecurID authenticators shall be deemed RSA Software and be subject to the restrictions on transferability set forth in Section 4(c) of the Agreement.

**Restrictions on use of RSA enVision Software:**

1. RSA enVision Software identified in an order as a test system may be used in non-production environments only;

2. enVision Software identified in an order as a standby system may be used with cold-standby deployments only. The foregoing is subject to the following exception: In the event the production system that the standby system has been purchased with is unavailable due to failure or maintenance, the standby system may be used in a production environment. In no event may redundant system pairs operate concurrently beyond the use required due to failure or maintenance. Use of the standby system in a production environment shall be subject to the license restrictions of the production environment it is replacing;

3. Customer may receive the enVision Software in more than one medium. Customer may not use or install the other medium on another computer and may not loan, rent, lease, or otherwise transfer the other medium to another user; and


**Restriction on Use of RSA Authenticators:** Customer shall use the RSA authenticators only to authenticate to RSA Software. Customer shall not use any hardware cards, tokens, or other devices not provided by RSA to authenticate to the RSA Software, unless otherwise authorized by RSA in writing.

**Restriction on Use of RSA Archer Software:**

If Customer is licensing RSA Archer software on a term basis, the following provisions shall apply:

**Software License Term:** Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, no perpetual licenses are granted to Customer for the use of the RSA Archer Software and the following provisions shall apply:

The initial term of the license granted by RSA to Customer to use the such RSA Archer Software (the "Initial Term") shall commence on the effective date of this Quotation and remain in effect for (i) the period stated on the first page of this Quotation; or (ii) where no such period is so stated for three (3) years, unless sooner terminated in accordance with the Governing Agreement(s). The Initial Term shall automatically renew for consecutive additional one (1) year periods (each a “Renewal Term”) provided that (1) Customer pays the applicable license fee (as specified in this Quotation or as otherwise quoted by an RSA representative or channel partner) prior to expiration of the then current term, and (2) neither party has sent the other party written notice of termination at least sixty (60) days prior to the end of the then current term.

No rights of termination for convenience will apply during the Initial Term or any Renewal Term and any provisions to the contrary in the applicable Governing Agreement(s) will be deemed amended to give effect to this provision. The license rights granted hereunder shall not survive termination of the Governing Agreement(s) and such Agreement(s) are deemed amended to give effect to this provision.
Pricing and Payment: The "Net Price" listed on the first page of this Quotation in the applicable row of the "Products" table shows the total amount that Customer shall pay for the license of RSA Archer Software for the Initial Term. RSA shall invoice Customer annually in advance for one (1) year's worth of license and maintenance fees for each year of the Initial Term and any Renewal Term. For example: if the Initial Term is three (3) years RSA will send Customer an invoice for 1/3 of the "Net Price" after the RSA Archer Software is made available to Customer through electronic file transfer or shipment of media containing such Software. In certain instances, RSA may invoice term licenses for RSA Archer software in a different manner. In such a case, the amount due for each year of the term license shall be set forth in the row entitled "Miscellaneous" on the first page of this Quotation.

If Customer is licensing RSA Archer Software bundled with other RSA software (SKU: BLP-P Solution Platform-perpetual license), the following provision shall apply:

Software License: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, Customer shall only be able to utilize the RSA Archer Software for internal purposes with other RSA software which Customer has licensed.

Restriction on Use of RSA NetWitness Products:

If Customer is purchasing RSA NetWitness Products, the following provisions shall apply:

RSA may use all or any portion of information and knowledge gained by RSA in connection with such products, including, without limitation, such information and knowledge regarding attacker and beacon activity, to improve hardware, software, and/or services. RSA may also share it with others, such as hardware and software vendors who may use it to improve how their products interoperate with or support RSA products or services. To the extent that any services specified in any contract resulting from this Quotation, including without limitation installation, configuration, and/or maintenance services, constitute “defense services” as defined under the U.S. International Traffic in Arms Regulations ("ITAR"), 22 CFR 120.9, then RSA’s commitment to provide such services shall be subject to the receipt of any required authorization from the U.S. Department of State, and the delivery schedule and pricing for such services shall be reasonably adjusted as appropriate to reflect such requirements. RSA shall not be liable for any delay in performing or failure to perform defense services due to delays or refusal by the U.S. Department of State to grant any such required authorization.

If Customer is licensing RSA NetWitness products or services on a term basis, the following provisions shall apply:

To the extent the first page of a Quotation offers a NetWitness product or service on a term or subscription basis, notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), no perpetual licenses are granted to Customer for the use of such product or service. The term license to such product or service shall commence on the effective date of this Quotation and remain in effect for the period stated on the first page of this Quotation.

Restriction on Use of RSA Adaptive Authentication On-Premise Product:

If Customer licenses the RSA Adaptive Authentication On-Premise Product, the provisions set forth on Schedule 1 hereto shall apply.
SCHEDULE 1

ADAPTIVE AUTHENTICATION PRODUCT SPECIFIC TERMS & CONDITIONS

1. Definitions.

The following terms shall have the definitions below or set forth elsewhere herein. All references to “Section” shall refer to sections of this Schedule, unless otherwise specified herein.

“Active End User” means an account holder or other client of the Customer (an “End User”) whose identity has been processed or profiled or scored or authenticated or otherwise verified by the Product at least once in the course of the six (6) months immediately preceding the then current date.

“Active End User Ceiling” means the maximum number of Active End Users which Customer is licensed to store at any given time using the Product and as set out in applicable Quote.

RSA “eFraud Network™” database means a database owned and operated by RSA which contains information aggregated by RSA, discovered by the parties as part of the performance of their obligations under this Schedule, obtained, and/or procured from third parties and/or resulting from risk and fraud assessments carried out by RSA and includes without limitation IP addresses, Phishing website URLs, and any other related data.

“Exhibit” means Exhibits A, B, and/or C attached hereto, the terms of which are incorporated herein by reference;

“Product” means (a) the RSA consumer software suite described in Exhibit A and developed by RSA together with any Software releases, fixes, or patches delivered pursuant to the Maintenance Services, known as the RSA Adaptive Authentication Web Protection System.

2. License, Ownership.

A. RSA hereby grants Customer a perpetual, non-exclusive, nontransferable license to run and use those components of the Product as selected an RSA Issued Quote, for Customer’s own use for the purpose of processing Active End User authentication information on its web portals, online services, and/or its electronic transaction clearing systems. Such license shall be subject always to the Active End User Ceiling as further detailed in this Schedule.

B. Additional Software License Restrictions. Customer will not directly or indirectly use the Product for its internal enterprise authentication purposes. For the purpose of the Schedule, “internal enterprise authentication” means authenticating a login request (which request may originate either remotely or from Customer or an Affiliate’s premises) of an employee, consultant, or an agent of Customer (or an Affiliate) for the purpose of granting the requestor access to Customer (or an Affiliate’s) computer networks for the purpose of performing their assigned work.

C. Ownership and/or License of the eFraud Network database information. RSA shall retain and own all right, title, and interest and all intellectual property rights (including but not limited to copyrights, trade secrets, trademarks, and patent rights) to all Information which is collected, submitted to, and made available on the eFraud Network in the course of the performance by either party of their obligations under this Schedule (or where such title cannot be granted or otherwise transferred to RSA, then Customer agrees to grant RSA an unconditional, unlimited, unrestricted, royalty free license to use, distribute, and/or otherwise make available such information).

D. RSA Trademark License. For so long as this Schedule remains in force, RSA grants Customer the right to use the “Secured by RSA” trademarks described in Exhibit C (the “RSA Mark”) solely for the purpose of displaying the RSA Mark on the End User facing web-based log in pages of its online services in compliance with Section 3 (on next page). Customer’s use of the RSA Mark will conform at all times with RSA’s quality and usage requirements and will be subject to prior review and approval by RSA. Customer will not seek to register any trademarks of RSA in any country in the world. Any use of the RSA Mark shall be in accordance with RSA’s reasonable policies regarding advertising and
trademark usage as established from time to time.

3. RSA Branding of the Active End User interface to the Licensed Software.

For so long as Customer is subscribing for the Maintenance Services, Customer will (unless it is a U.S. governmental entity) place the following words: “Secured by RSA”, in the form of the trademark logo attached hereto under Exhibit C, on (i) the client facing web-based user interface which is deployed by Customer for the purpose of allowing Active End Users access to the Product; and (ii) whenever the personal security image of the site-to-user authentication module (as described in Exhibit A) is shown. Nothing else herein shall prevent Licensee from separately branding its security processes which may use the Licensed Software and other security processes.


Customer will provide RSA with the billing files as generated by the billing utility component of the Product (as further detailed in the Documentation) at the end of each calendar month for the purpose of evidencing its ongoing compliance with the Active User Ceiling from time to time and subject to RSA’s audit rights under the Agreement.

5. Product Delivery.

RSA Software shall be delivered to the Customer at the email address specified in Exhibit A.

6. Authorized Active End Users; Active End User Ceiling Increases.

Customer may increase the authorized Active End User Ceiling from time to time by way of a purchase order referencing this Schedule. Where Customer has exceeded its then authorized Active End User Ceiling, Customer will promptly (and in any event in not less than thirty (30) days from the date the Active End User Ceiling is first exceeded) procure an increase to its then licensed authorized Active End User Ceiling, for the fees and in the minimum increments set out in a Quote so as to meet or exceed its actual use of the Product. Such increases will be procured by way of a purchase order referencing the Quote. Where Customer has upgraded the authorized Active End User Ceiling, RSA will invoice Customer the adjusted Maintenance Services fees on a pro-rata basis for the Maintenance Services year then in progress on the date of such upgrade in a Quote.


Customer hereby purchases the Enhanced Support and Data Services as further described in Exhibit B for the Products ordered under this Schedule for a term of one (1) year (the “Initial Maintenance Term”) commencing on the date the Product is first made electronically available for download. Thereafter, Maintenance Services shall renew on an annual basis, subject to Customer’s payment of RSA’s invoice for the applicable Maintenance Services fees. RSA may increase the Maintenance Services fee, to be effective at the commencement of any future annual period, provided that RSA notifies Customer, in writing, of such fee increase at least thirty (30) days prior to the end of the previous annual period.
Base Product Description:

The Product without Additional Features is available for the license fees detailed in a signed Quote.

**Product—RSA Adaptive Authentication Components—Login**

- Risk Based Authentication at Login (web-channel device identification using secure cookies, Flash Shared Objects, device forensics and network forensics including IP geolocation. This can be applied only during account login).
- Baseline Policy Manager and Risk Models. (One set of policies per institution and generic risk models.)
- Secondary Authentication: Challenge Questions. (Challenge Questions, including enrollment to collect challenge questions and answers.)
- RSA eFraud Network Access. (Shared fraud data.) It is understood by the parties that Customer's access to the eFraud Network shall be contingent on Customer's agreement to submit non-identifiable fraud data via log files for inclusion in RSA eFraud Network's aggregated database and subject to Customer's ongoing subscription to the Enhanced Support and Data Services.
- Case Management Module. Provides the Client functionality to track and update Active End User activities that were flagged for follow-up or authentication.
- Site to User Authentication Module. (Enrollment and maintenance of image assignments, and image pool of 38,000 images.)

**Description of Additional Features:**

These components of the Product are available for extra license fees as detailed in a signed Quote.

**Product—Transaction Monitoring**

Assessment, analysis, and scoring of post-login transactions activities by a Bayesian, self-learning risk engine that leverages both device and behavioral profiling. A case management application allows investigating high risk transactions, marking the fraudulent ones, and feeding feedback into the risk engine. A partial list of such post-login transaction activities includes but is not limited to: transferring funds, making online payments, establishing payees, viewing check images, changing personal information, etc.

**Product—Mobile Protection**

The RSA Adaptive Authentication Mobile Protection Module provides strong authentication to End Users who access online banking applications via a mobile device (i.e., mobile phone, smart phone, iPhone, PDA, Blackberry, etc.). This module complements RSA Adaptive Authentication's web channel protection module. It is powered by the same risk-based authentication technology and provides the Customer with a unique risk model designed to address specific mobile transaction characteristics. By using the Mobile Protection Module, the Customer benefits from multi-channel fraud protection.
## Service—Authentication Methods

<table>
<thead>
<tr>
<th>Authentication Method</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OneTime Password (&quot;OTP&quot;)</strong></td>
<td>OTP generated by Adaptive Authentication and sent by Customer to the End User.</td>
</tr>
<tr>
<td><strong>Out of band (&quot;OOB&quot;) Phone Call</strong></td>
<td>OOB phone call (telephone confirmation, using RSA’s service and infrastructure and telephone numbers stored in Customer’s systems. Depending on the selected integration method, the OOB phone feature requires additional telephony infrastructure and involves set up costs and fees to make the phone calls.</td>
</tr>
<tr>
<td><strong>OOB SMS</strong></td>
<td>One Time Password generated by Adaptive Authentication and sent by RSA to End User via OOB SMS using phone numbers stored in Customer’s system (only for phones that support SMS). The OOB SMS feature involves set up costs and fees to send the SMS. Delivery of SMS messages (or timing of delivery) is not guaranteed.</td>
</tr>
</tbody>
</table>
B

Enhanced Support and Data Services

Customer acknowledges that the Basic Support Services (as described on the Support Website) are not available for the Product licensed under this Schedule.

In addition to then current Enhanced Support Services which will be provided as detailed on the Support Website, the Customer will also receive the Data Services described hereunder.

1. Definitions.
   In addition to those defined terms of the Agreement and the Schedule, the following definitions shall be used for purposes of this Exhibit B.
   A. **“Data Services”** means, the delivery by RSA on an ongoing basis of (i) the Information; and (ii) updates to the eFraud Network; and RSA making available the online statistical analysis tools for the use of the Customer. The Information and any other data delivered pursuant to the Data Services will be deemed to form part of the Product under the Schedule.
   B. **“Geo-Location Service”** means the geo-location component made available with the Product.
   C. **“Information”** means the data and information derived from the Geo-Location Service.

2. RSA Data Feeds for Adaptive Authentication.
   Customer will receive the following Data Services:
   A. Delivery of eFraud Network database updates. Updates to the eFraud Network database will be made available to Customer by RSA via Internet protocol from RSA hosted servers. Where configured in accordance with the Documentation, the Product will automatically download the updates on a periodic basis and load them into a local data store, which is used for run-time analysis of inbound transactions.
   B. Delivery of Information. Information updates will be made available by RSA to Customer via Internet protocol from RSA hosted servers. Customer will download the updates on a periodic basis and load the Information into the Product for run-time analysis of inbound transactions.
   C. Online Statistical Analysis Tools. RSA will make available to Customer a set of reports or tools for generating reports, which will be hosted on RSA web servers, to allow Customer to understand Product system usage levels and patterns.

   Customer may purchase enhancements to the Maintenance Services, including the Personalized Support options Services, as described on the Support Website.

4. Additional Customer Obligations.
   A. Network and Device Forensics. In addition to those obligations set out on the Support Website, Customer shall provide to RSA daily scrubbed data activity logs, the case log file and the forensic data logs as further described in the Documentation. RSA will review these logs in order to provide the Maintenance Services hereunder and to improve forensic analysis of future Software Releases of the Product. Customer shall not transmit, send, or otherwise provide, directly or indirectly, to EMC any data that is considered personally identifiable under the laws of the jurisdictions applicable to Customer’s installation and use of the Product and Customer’s operations, and shall indemnify EMC for all third-party claims arising as a result of Customer’s breach of this obligation.
SECURED BY RSA—Logo Designator for RSA Adaptive Authentication Customers

The SECURED BY RSA logo has been designed as an indicator that the customer is using the RSA Adaptive Authentication solution. It is designed for web and print use and is not intended to be a substitute for the corporate logo or for use in locations other than the web pages or promotional material of companies that have purchased Adaptive Authentication. Nor is the SECURED BY RSA mark to be used as a substitute for the corporate logo in places where the Customer corporate logo is appropriate. This logo is not posted. Logo files may be obtained by contacting the Identity Protection and Verification solutions group at RSA corporate headquarters. It is to be used at the size indicated below. The logo consists of the RSA brick and the words SECURED BY. These two components should not be separated or changed; SECURED BY should always appear in the same proportions and relationship to the RSA notched rectangle.

In customer applications, the logo is to be seen only as a third-party mark that indicates the security features of the customer’s website. Therefore the following restrictions apply to use:

(i) The logo may not be enclosed by the Customer’s logo or other artwork so as to appear to be part of the Customer’s logo.

(ii) The logo may be placed adjacent to the customer’s logo or other artwork as long as there is sufficient empty (white) space between the two logos. Sufficient space online is defined as 20 pixels in any direction from the outer edges of the SECURED BY RSA logo. Sufficient space in print is defined as .5 inches in any direction from the outer edges of the logo.

EMC², EMC, the EMC logo, the RSA logo, RSA, RSA Archer, eFraud Network, eVision, and NetWitness, are registered trademarks or
<table>
<thead>
<tr>
<th>Product</th>
<th>Standard Warranty Period and Support Option</th>
<th>Support Option Upgrade during Warranty Period</th>
<th>Initial Product Installation</th>
<th>Support Options during Maintenance Period</th>
<th>RMA-Parts Replacement</th>
<th>Customer Performed Tasks (*1)</th>
<th>Designated Customer Replaceable Units (CRU’s) (*2)</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>RSA Software</td>
<td>90 days: defective media replacement</td>
<td>N/A</td>
<td>Installation not included.</td>
<td>Basic, (*6) Enhanced</td>
<td>N/A</td>
<td>Customer Installation of</td>
<td>subsequent Software Releases</td>
<td>N/A</td>
</tr>
<tr>
<td>RSA Tokens</td>
<td>Full Lifecycle of Token up to 6 months from expiration</td>
<td>N/A</td>
<td>Installation not included.</td>
<td>Basic, Enhanced</td>
<td>Standard Token Replacement (*3)</td>
<td>Advanced Token Replacement (*4)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>RSA Appliance</td>
<td>90 Days</td>
<td>N/A</td>
<td>Installation not included.</td>
<td>Enhanced</td>
<td>Advanced Replacement (*5) - Next Business Day (Requests must be in by 2pm EST or 4pm Western Europe Time). 1st Year Advanced Replacement Maintenance for years 2 through 5</td>
<td>Customer(*7) Installation of subsequent Software Releases</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Saas</td>
<td>N/A Hosted Solution(*8)</td>
<td>N/A</td>
<td>Performed by RSA</td>
<td>Basic, Enhanced</td>
<td>N/A</td>
<td>RSA Operation responsible for installation and maintenance of Hosted environment</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>
1. Customer-Performed Tasks:
Customer-performed tasks are product support tasks that Customer is authorized by RSA to perform. RSA will provide diagnostic tools and documentation to enable customers to perform replacement of designated Equipment and other service tasks.

2. Customer Replaceable Units (CRUs):
CRUs are specific assemblies, components or individual parts of designated RSA Equipment that Customer is authorized by RSA to self replace. In the event of a failure or technical issue, a customer may remove and replace a CRU by using RSA provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs, must be serviced and/or replaced by RSA or an RSA authorized service partner.

**Authentication Manager and Authentication Manager Express CRU parts limited to complete Appliance**

3. Standard Token Replacement:
The System/Security Administrator at your company will return any non-expired tokens that no longer function properly to RSA. Replacements will be shipped within 5 days after the defective token is received. A printable form will be e-mailed back to the customer containing a pre-filled return form with RMA numbers and ship-to information. More details can be found here: https://selfservice.rsasecurity.com/TWR/

4. Advanced Token Replacement:
After filling out the appropriate information, RSA will ship out replacements for each valid token within 2 or 3 days. It is the customer's responsibility to ship the defective tokens back within 60 days of the receipt of the replacement tokens. If not, RSA will invoice for the amount of the replacement tokens shipped. More details can be found here: https://selfservice.rsasecurity.com/TWR/

5. Advanced Replacement:
Appliances are shipped out same day or next business day. Secure ID Appliances must be returned within 15 days of receiving replacement or full value of Replacement Appliance will be incurred by Customer. For all other Appliances, Customer has 10 days to return faulty appliances.

6. Basic support not available for AA on Prem, Access Manager, DPM, or Authentication Manager

7. DPM Appliance installation performed by RSA/EMC Professional Services

8. SaaS
90 day defective media replacement. For both Archer and Adaptive Authentication for the Web on Premise

Archer On Premise: Installation not included. Performed by Customer or may be available for separate purchase
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached SDL Government ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   w) Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

   x) Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   y) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   z) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract, and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   aa) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   bb) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   cc) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   dd) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   ee) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   ff) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Please read the terms and conditions of this Agreement carefully. Licensor is willing to license the Software to you only if you agree to be bound by all the terms and conditions of this Agreement. This written Agreement supersedes any other End User Software License Agreement embedded via an installer for the Software.

1. Grant of License. Subject to the terms and conditions of this Agreement and the underlying GSA Schedule Contract, Licensor grants to Customer a nonexclusive, nontransferable license: (a) to use the Software in the configuration for which you have paid a license fee (or in the event Licensor has provided you with the Software on a no fee basis for beta, evaluation, testing or demonstration purposes, your use of the Software shall be limited to such purposes), and only for your internal use; and (b) to copy the Software as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for internal archival purposes so long as no more than one such copy is used at any time. All copies of the Software made pursuant to subsection (b) shall be true and complete copies, and shall include all copyright, trademark and other proprietary notices as are contained on or in the original. Licensor reserves all rights in the Software not expressly granted to Customer in this Agreement.

2. Restrictions. Except as may be expressly authorized in this Agreement, Customer shall not: (a) copy or modify the Software, in whole or in part; (b) transfer, sublicense or otherwise distribute the Software to any third party; (c) lease, lend or rent the Software, use the Software to provide service bureau, time sharing, application services provider, hosting, language translation or other computer services to third parties, or otherwise make the functionality of the Software available to third parties with or without consideration; or (d) disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

3. Ownership. You expressly acknowledge that, as between Licensor and Customer, Licensor owns all worldwide right, title and interest in and to the Software and all improvements thereto, including all worldwide intellectual property rights therein. You will not delete or in any manner alter the copyright, trademark and other proprietary rights notices appearing on the Software as delivered to you. You will reproduce all notices on all copies you make of the Software. In the event Licensor has provided Customer with the Software for evaluation purposes, you will be issued an Evaluation Agreement and will be asked to provide feedback to Licensor regarding the Software (including comments, questions, suggestions, and the like) ("Feedback") in accordance with that Evaluation Agreement. You agree that any Feedback can be used by Licensor for purposes of improving the Software. In the event the end user of this license is a U.S. government agency, you will obtain written permission from the U.S. government agency to release any Feedback to Licensor, and for Licensor to use the Feedback for purposes of improving the Software. Any licenses for test and development purposes will be sold under separate terms and conditions. Test and development licenses are only to be used for internal assessment or testing purposes, and software provided for test and development purposes will not be installed, used or incorporated into any production environment.

4. Term. This Agreement will begin on the date Customer accepts this Agreement and will remain in effect for the term for which you have paid a license fee as set forth in the applicable ordering document, unless terminated earlier in accordance with the terms of this Agreement. Upon expiration or termination of this Agreement, you shall discontinue all use of the Software, and provide Licensor with a written certification stating that you have uninstalled the software and ceased using the license.

5. Support. If Customer issues an order for support, Licensor will provide you with technical support services for the Software. All technical support services will be subject to and performed in accordance with Licensor's Support and Maintenance Agreement issued at time of license delivery. Licensor reserves the right to change its technical support practices at any time, but will not reduce the level of technical support practices for which fees have been paid.

6. Limited Warranty. Licensor warrants that, for a period of sixty (60) days after the shipment date of the Software, the Software will be capable of performing in all material respects in accordance with the functional specifications set forth in the applicable documentation for the Software that has been provided with installation. As your sole and exclusive remedy and Licensor's entire liability for any breach of the warranty set forth in this Section 6, Licensor will, at its option: (a) promptly correct any Software that fails to meet this warranty; (b) provide you with a reasonable procedure to circumvent the nonconformity; or (c) refund the license fees paid by you for the non-conforming Software upon your return of such Software to Licensor. The warranty set forth in this Section 6 does not apply in the event Licensor has provided you with the Software on a no fee basis for beta, evaluation, testing or demonstration purposes.

7. Disclaimer. Licensor does not warrant that the Software will meet Customer's requirements, that the operation of the Software will be error-free or uninterrupted or that all Software errors will be corrected. EXCEPT AS PROVIDED IN SECTION 6, THE SOFTWARE PROVIDED HERUNDER IS PROVIDED "AS IS" AND LICENSOR MAKES NO WARRANTY OF ANY KIND WITH REGARD TO THE SOFTWARE. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. No advice or information, whether oral or written, obtained from Licensor or elsewhere will create any warranty not expressly stated in this Agreement.

8. Reserved.

9. Reserved.

10. Proprietary Information.

10.1 Restrictions. Customer acknowledges that, in the course of this Agreement you may obtain certain confidential or proprietary information of Licensor ("Proprietary Information"). "Proprietary Information" includes (a) Licensor's technical, engineering, manufacturing, product, marketing, servicing, financial, personnel and other information, (b) the licensed software, and (c) documentation such as manuals and other supporting materials related to the software. As between Customer and Licensor, the Proprietary Information shall belong solely to Licensor. You agree: (i) to protect Proprietary Information from unauthorized dissemination and use, (ii) to use Proprietary Information only for the performance of this Agreement and the exercise of any rights granted to you under this Agreement, (iii) not to disclose any Proprietary Information to any of your employees, contractors, agents or any other third party, except to the extent that such disclosure is necessary to perform your obligations under this Agreement, and (iv) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Proprietary Information. Licensor's trademarks and other proprietary rights are hereby acknowledged and shall not be used except in accordance with the licenses granted to you hereunder.

10.2 Equitable Relief. Customer agrees that, due to the unique nature of the Proprietary Information, the unauthorized disclosure or use of Proprietary Information or any other breach of any provision of Section 10.1 will cause irreparable harm and significant injury to Licensor, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, you agree that Licensor, in addition to any other available remedies, shall have the right to obtain an immediate injunction and other equitable relief enjoining any breach or threatened breach of Section 10.1

SDL GOVERNMENT, Inc. WARRANTY AND SUPPORT TERMS

Attachment A – SDL GOVERNMENT, Inc.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SDL GOVERNMENT, Inc.
without the necessity of posting any bond or other security. You shall notify Licensor in writing immediately upon becoming aware of any such breach or threatened breach.

11. U.S. Government End User Terms

11.1. Applicability. The U.S. Government end user terms and conditions set forth in this Section 11 shall apply to all instances where Customer is the U.S. Government, or a Prime Contractor or Subcontractor that is using the Software to provide services to or for the U.S. Government (each, a “U.S. Government End User”). In the event that Customer is a U.S. Government End User, the following provisions of this Agreement do not apply, and, where relevant, are superseded by the applicable provision of FAR 52.212-4 or other applicable law, such as the Contracts Disputes Act: 4 (to the extent it permits termination by Licensor), 5 (to the extent it permits unilateral alteration of support terms by Licensor), 8, 10 (to the extent inconsistent with the Freedom of Information Act), 12.6, 12.7.


(a) The Software and any derivatives are “commercial items” as defined in 48 C.F.R. 2.101 (“Commercial Items”). If Customer is a U.S. Government End User, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and any associated documentation and technical data is restricted in accordance with 48 C.F.R. §12.211; 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. A third party may resell the Software to a U.S. Government End User, and if only if, the Software is licensed to the U.S. Government End User subject to the terms of this Agreement.

(b) Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Software is provided to U.S. Government End Users: (i) only as Commercial Items, (ii) with only those rights as are granted to other users pursuant to this Agreement (except as otherwise noted in Section 11.1), and (iii) the terms of this Agreement are incorporated into any Reseller, Prime Contractor, or Subcontractor’s contract with the U.S. Government or otherwise agreed to by Customer in a way that legally binds the U.S. Government to these terms. This U.S. Government Rights clause is in lieu of, and supersedes, any Federal Acquisition Regulations (“FAR”), the Defense FAR Supplement (“DFARS”), or other clause or provision that addresses U.S. Government rights in computer software or technical data.


12.1 Independent Contractor and Subcontractors. Licensor is an independent contractor and not an agent or representative of Customer or any Reseller. No employee of Licensor shall be deemed an employee of Customer or any Reseller. Customer will have no direct control over Licensor or its employees. Licensor may engage subcontractors without notice to or consent of Customer.

12.2 No Third-Party Beneficiaries. Licensor and Customer mutually agree that this Agreement is intended to be solely for the benefit of the Parties and that no third party shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement.

12.3 Third-Party Hardware and Software. The Software provided under this Agreement may necessitate use of certain third party hardware, software and/or data products by Customer. Customer shall be solely responsible for obtaining licenses to such third party hardware, software or data for its own use. Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, Licensor has no liability for such third party hardware, software or data, whether in warranty, indemnity, or otherwise.

12.4 Publicity. Licensor may make reference to the existence of this Agreement and disclose that Customer is a customer of Licensor, including, without limitation, that Customer is a customer of Licensor with respect to the Software, without Customer’s further consent. Customer may not make any reference to this Agreement, including the existence of this Agreement, in any prospectus, proxy statement, offering memorandum, or similar document without Licensor’s prior written consent, which Licensor may grant or withhold, in its reasonable discretion.

12.5 Severability. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of the other provisions of this Agreement shall not in any way be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

12.6 Reserved.

12.7 Reserved.

12.8 No Waiver. No course of dealing, course of performance or failure of either Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

12.9 Relationship of the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the Parties, and the Parties shall at all times be and remain independent contractors. Except as expressly agreed by the Parties in writing, neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever.

12.10 Notices. Licensor shall deliver all notices and communications concerning the Software or this Agreement to the attention of the individual or group designated by the Parties in writing on the signature page of this Agreement. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed given upon receipt when: (a) delivered personally; (b) sent by registered or certified mail, return receipt requested, postage prepaid; (c) sent via express courier, with written confirmation of receipt; or (d) delivered via email with read receipt or reply confirming recipient viewed the message.

12.11 Compliance with Laws. Customer agrees that it shall comply with all laws and regulations of the United States and other applicable jurisdictions in access and using the Software. Without limiting the generality of the foregoing, Customer shall not make the Software available to any person or entity that: (a) is located in a country that is subject to a U.S. Government embargo; (b) is listed on any U.S. Government list of prohibited or restricted parties; or (c) is involved in activities directly or indirectly related to the proliferation of weapons of mass destruction.

12.12 Export Laws. The Software and related documentation are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations and acknowledges that Customer is responsible for obtaining such licenses to export, re-export, or import as may be required.

12.13 Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

12.14 Complete Agreement. This Agreement, any exhibits and schedules attached to it, any other terms and conditions incorporated by reference herein, and the terms and conditions of the underlying GSA Schedule Contract, contain the entire understanding of the Parties with respect to the subject matter hereof, and supersede any and all related prior understandings, agreements, representations, negotiations and discussions, whether oral or written. This Agreement cannot be modified or amended except in a writing signed by both Parties.


13.1 “Affiliate” of a Party means (i) an entity that owns directly or indirectly, a controlling interest in such Party, (ii) an entity in which such Party owns a controlling interest, by stock ownership or otherwise, or (iii) an entity under common control with such Party, directly or indirectly. As used in this Agreement, the terms “controlling interest” and “common control” mean the ownership, directly or indirectly through the stockholders, interest holders or members of an entity, of more than fifty percent (50%) of the voting securities or other ownership interest of the other entity, or the possession, directly or
indirectly, of the power to direct the management or policies of the other entity, whether through the ownership of voting securities, by contract, or otherwise.

13.2 “Party” when used in the singular refers to either Licensor or Customer. “Parties” refers to both Licensor and Customer.

13.3 “Prime Contractor(s)” means one or more non-Government Agency third party(ies) that has entered into a prime contract with the U.S. Government authorizing such third party(ies) to, on behalf of, or as an agent to the U.S. Government, obtain software and services similar to those authorized for resale by Licensor under this Agreement. Designation as a “Prime Contractor” will immediately expire upon expiration or termination of the prime contract between the Prime Contractor and the authorizing U.S. Government agency.

13.4 “Reseller” means an entity authorized by Licensor to resell or make available the Software on Licensor’s behalf.

13.5 “Software” means SDL Government’s Enterprise Translation software.

13.6 “Subcontractor(s)” means one or more non-U.S. Government third party(ies) at any tier that has entered into a subcontract with a Prime Contractor or a higher-tier Subcontractor authorizing such third party(ies) to obtain software and services similar to those authorized for resale by Licensor under the Agreement, but who shall not resell, distribute or sublicense the Software to any other party. Designation as a “Subcontractor” will immediately expire upon expiration or termination of the subcontract between the Subcontractor and the Prime Contractor or higher-tier Subcontractors.

13.6 “U.S. Government” means an agency, department or instrumentality of the United States Government, international agencies of which the U.S. Government is or becomes a member, and any other U.S. Federal Government entity authorized to purchase off of Government contracts on behalf of the United States Government.
1. **Scope.** This Rider and the attached **Secon Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1777 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.,), the validity, interpretation and enforcement of this Rider shall be governed and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SECEON INC.**

**SECEON INC. WARRANTY AND SUPPORT TERMS**

Attachment A – Secon

End User License Agreement

1) **Definitions.**
a) “Authorized Partner” means any of Seceon’s distributors, resellers or other business partners.

b) “Grant Letter” means a confirmation notice letter issued electronically by Seceon to you, confirming Software and Support purchased by you, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below) and also containing download details.

c) “Documentation” means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.

d) “Seceon” means (a) Seceon, Inc., a Massachusetts corporation, with an office located at 238 Littleton Rd., Suite 202, Westford, MA 01886 USA) “Node” means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homeworker/teleworker homebased systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers or portable workstations connected or connecting to the server(s) or network.

e) “Software” means each Seceon software program in object code format licensed by Seceon and purchased from Seceon or its Authorized Partners, including Upgrades.

f) “Subsidiary” refers to any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.

g) “Support” or “Technical Support” means the support services offered by Seceon for the support and maintenance of the Software and Seceon brand hardware further specified in the Seceon Technical Support and Maintenance Terms. i) “Updates” are related to content and include without limitation all DATs, signature sets, policy updates, database updates for the Software which are made generally available to Seceon’s customer base as a part of purchased Support and which are not separately priced or marketed by Seceon.

h) “Upgrade” means any and all improvements in the Software which are made generally available to Seceon’s customer base as part of purchased Support and which are not separately priced or marketed by Seceon.

2) License Grant. Subject to the terms and conditions of this Agreement and the applicable ordering document, Seceon hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, use of the Software means to access, install, download, copy or otherwise benefit from using the Software) for your own internal business operations. You acknowledge that the Software and all related information are proprietary to Seceon and its suppliers. You are not granted rights to Updates and Upgrades unless you have purchased Support or a service subscription.

3) Copy and Use terms.

a) Product entitlement: The use of the Software depends on the licenses purchased (e.g. Nodes). Software is installed may not exceed your product entitlement. Certain Software licensed as part of a suite-based Seceon product may also require the purchase of a separate Seceon server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.

b) Term: The license is effective for a limited period of time (“Term”) in the event that such Term is set forth in the Grant Letter and the applicable ordering document, otherwise the licenses shall be perpetual.

c) Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.

d) Managing Party: If you enter into a contract with a third party in which the third party manages your information technology resources (“Managing Party”), you may transfer all your rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement and (c) you provide Seceon with written notice that a Managing Party will be using the Software.

e) Subsidiaries: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You shall be responsible and fully liable for each Subsidiary’s compliance with or breach of the terms of this Agreement.

f) General Restrictions: You may not, nor allow any third party to:

(i) decompile, disassemble or reverse-engineer the Software, except to the extent expressly permitted by applicable law, without Seceon’s prior written consent;

(ii) remove any product identification or proprietary rights notices of the Software or Documentation;

(iii) lease, lend or use the Software for timesharing or service bureau purposes;

(iv) modify or create derivative works of the Software,

(v) except with Seceon’s prior written permission, publish any performance or benchmark tests or analysis relating to the Software or

(vi) otherwise use or copy the Software except as expressly provided herein.

4) Technical Support and Maintenance. The Seceon Technical Support and Maintenance Terms apply if you have purchased Support. The Seceon Technical Support and Maintenance Terms are incorporated by reference. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support.

5) Limited Warranty and Disclaimer.

a) Limited Warranty: Seceon warrants that, for a period of 1 year from the purchase date (“Warranty Period”), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.
b) Exclusive Remedy: In case of any breach of the above limited warranty, Seceon will (a) repair or replace the Software or (b) if such repair or replacement would in Seceon’s opinion be commercially unreasonable, refund the price paid by you for the applicable Software.

c) Exclusion of Warranty: The above Limited Warranty will not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation, (ii) the Software or any part thereof has been modified by any entity other than Seceon or (iii) a malfunction in the Software has been caused by any equipment or software not supplied by Seceon.

d) Disclaimer: THE ABOVE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND SECEON MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.

7) Intellectual Property Indemnity.

a) Third-party claims: Subject to 28 U.S.C. § 516, Seceon shall defend and hold you harmless from any claim by a third party that the Software infringes, whether a patent, copyright or trade secret of that third party, provided that: (i) Seceon is notified promptly, and in any event no later than within 14 days of your receipt of notice of the claim, (ii) Seceon receives the required level of reasonable cooperation from you in order to perform Seceon’s obligations hereunder and (iii) Seceon has control over the defense and all negotiations for a settlement or compromise of the claim. The foregoing obligation of Seceon does not apply with respect to Software or portions or components thereof that are: (i) not supplied by Seceon, (ii) used in a manner not expressly authorized by this Agreement or the relevant Documentation, (iii) made in accordance with your specifications, (iv) modified by anyone other than Seceon, if the alleged infringement relates to such modification, (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination or (vi) where you continue the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.

b) Remedy and Liability: In the event that the Software is held by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, Seceon shall, at its sole discretion, do one of the following: (i) procure for you the right to continue use of the Software, (ii) provide a modification to the Software so that its use becomes non-infringing, (iii) replace the Software with software that is substantially similar in functionality and performance or (iv), if none of the foregoing alternatives is reasonably available to Seceon, Seceon shall refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you. This Section 7 states Seceon’s sole liability and your exclusive remedy for intellectual property infringement claims.

8) Additional Terms.

a) Reserved.

b) Reserved.

c) “Free” or “Open-Source” Software: The product may include programs or code that are licensed under an OpenSource Software (“OSS”) license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

10) Notice to United States Government End Users. The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

11) Privacy and Collection of Personal or System Information.

a) The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Seceon products installed, Seceon components, processes and services information, frequency and details of update of Seceon components, information about third party products installed, extracts of logs created by Seceon, usage patterns of Seceon products and specific features, etc.) (collectively, “Data”).

b) The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on your and users’ computer network), enable Seceon to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.) and to further or improve overall security for you and users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

c) You are solely responsible for securing any privacy-related rights and permissions from your users as may be required by local law or by your internal policies. Seceon will only collect, process, copy, backup, store, transfer and use personally identifiable information.
12) Audit. Subject to your security requirements, Seceon may, at its expense, upon reasonable prior written notice to you and during standard business hours, audit you with respect to your compliance with the terms of this Agreement no more than once per year. You understand and acknowledge that Seceon utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, you will provide a system-generated report verifying your Software deployment, such request to occur no more than two (2) times per year. Seceon will not unreasonably interfere with the conduct of your business.

13) Export Controls. You acknowledge that the Software is subject to US export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see http://Seceon.com/us/about/export_compliance/index.html (then click on US Export Compliance. Seceon reserves the right to update this website from time to time, at its sole discretion.)

14) Reserved.

15) Reserved.

16) Reserved.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Secure Channels Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect.

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
ccc) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibits such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

ddd) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

eee) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

fff) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

ggg) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

hhh) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

iii) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

jjj) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

kkk) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

lll) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

mmm) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

nnn) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

1. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SECURE CHANNELS

SECURE CHANNELS, WARRANTY AND SUPPORT TERMS

Secure Channels Inc.

All references to Secure Channels, Inc. ("SCI") in these Terms and Conditions should be read as "Contractor (immixTechnology, Inc.), acting by and through its supplier, SCI."

SECURE CHANNELS, INC.'S END USER LICENSE AND TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT

This End User License and Technical Support and Maintenance Agreement ("EULA") is a legal agreement between the Customer ("you") either a Government agency or instrumentality and Secure Channels, Inc. and its subsidiaries (collectively, "SCI") for SCI's Software, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (collectively "Licensed Software") as well as technical support and maintenance services for the Licensed Software ("Technical Support and Maintenance") if acquired from SCI. The Licensed Software also includes any updates and supplements to the original Licensed Software which may be provided to you by SCI. The Licensed Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Licensed Software is licensed, not sold.

1. Grant of License; License Keys.

   A. Grant. Under this EULA, SCI grants to you a non-exclusive license to use the version of the Licensed Software provided to you by SCI, and to receive Technical Support and Maintenance if acquired, solely for your own internal purposes and subject to the terms of this EULA. Your use of the Licensed Software shall also be in accordance with the documentation for the Licensed Software and the applicable License Key and License Configuration as defined herein. Your license rights as specified herein may be perpetual ("Perpetual License"), or limited to a subscription period, if applicable ("Subscription License"). You may allow your employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) to use the Licensed Software for your internal purposes and you are responsible for their compliance with the terms of this EULA in such use. Unless otherwise provided in this EULA, you may only make copies of the Licensed Software for archive purposes. The Licensed Software is deemed accepted as provided in the Federal Acquisitions Regulations ("FAR") and the underlying ordering document.

   B. License Keys. The Licensed Software may require an applicable license key in order to access its functionality ("License Key"). In order to access the full functionality of the Licensed Software, each copy of the Licensed Software may require an applicable License Key issued by SCI for a limited number of servers or users, specifically identified computers, fixed subscription period and/or other usage rights or limitations ("License Configuration") specified in an applicable ordering document ("Order").

2. Other Rights and Limitations.

   A. Limitations on Reverse Engineering, Decompilation and Disassembly. You shall not cause or permit the reverse engineering, decompilation, or disassembly of the Licensed Software or any portion thereof, except and only to the extent that such activity is expressly permitted by applicable federal law.

   B. Marks. This EULA does not grant you any rights in connection with any trademarks or service marks of SCI. You shall not remove or modify any Licensed Software markings or any notice of SCI's proprietary rights.

   C. Third Party Use. You shall not rent, lease or lend the Licensed Software, or make the Licensed Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted in writing by SCI).

   D. Actual License Limits. You may not use software or hardware that (i) reduces the number of users directly accessing or utilizing the Licensed Software; (ii) allows you to exceed the number of processors ("CPUs") or servers for which the Licensed Software is licensed to you; or (iii) otherwise prevents the Licensed Software from keeping an accurate count of the number of users, CPUs or servers actually accessing or utilizing the Licensed Software.

   E. Benchmarks and Competitive Use. You shall not disclose results of any Licensed Software benchmark tests without SCI's prior written consent. The Licensed Software may not be used for purposes of competitive analysis or development of a competitive product.

   F. Proprietary Rights. All rights, title, interest and copyrights in and to the Licensed Software are owned by SCI or its licensors.

3. Technical Support and Maintenance Services. This EULA does not entitle you to receive any enhancements, improvements or modifications to the Licensed Software. SCI may provide you with Technical Support and Maintenance if you have ordered such services from SCI, subject to the execution of an applicable Order. Use of Technical Support and Maintenance is governed by SCI's policies and programs. Any enhancements, improvements, modifications or other supplemental software provided to you as part of Technical Support and Maintenance shall be considered part of the Licensed Software and subject to the terms and conditions of this EULA. With respect to technical information you provide to SCI as part of Technical Support and Maintenance, SCI may use such information for its business purposes, including for product support and development.

4. Inspection/Acceptance. The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("SCI") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights- (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
5. Warranties, Disclaimers and Remedies.

If you have acquired a Perpetual License for the Licensed Software, SCI warrants for 90 days after acceptance in accordance with the FAR and the underlying ordering document, (the "Warranty Period") that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

If you have acquired a Subscription License for the Licensed Software, SCI warrants for 90 days after the start of your subscription, or an annual renewal of such subscription, if applicable ("Subscription Warranty Period") that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

You must notify SCI of any Licensed Software warranty deficiency during the applicable Warranty Period. SCI also warrants that if you contracted and paid for Technical Support and Maintenance, it will be provided in a professional manner consistent with industry standards. You must notify SCI of any Technical Support and Maintenance warranty deficiencies within 60 days of the performance of the deficient Technical Support and Maintenance.

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6. Reserved.

7. Reserved.

8. Indemnification. If someone makes a claim against you that the Licensed Software provided to you by SCI under this EULA and used by you according to the documentation for the Licensed Software infringes that party's intellectual property rights, SCI will indemnify and hold you harmless against the claim provided you: (a) notify SCI promptly in writing, not later than 30 days after you receive notice of the claim; (b) provide SCI with the opportunity to intervene in any litigation, at its own expense, through counsel of its choosing SCI and (c) SCI will provide the Government with the information, assistance and authority as required to defend against or settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If SCI believes or it is determined that the Licensed Software violated someone else's intellectual property rights, SCI may choose in its discretion to: (i) modify the Licensed Software to be non-infringing; (ii) work with the Government to obtain a license for you to allow for continued use; or (iii) terminate the license for the Licensed Software and require its return, and refund a prorated portion of any fees you may have paid for the Licensed Software. SCI has no obligation to indemnify or hold you harmless: (A) if you alter the Licensed Software or use it outside the scope of the License Configuration; (B) if you continue to use a version of the Licensed Software which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Licensed Software which was provided to you; (C) to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by SCI; or (D) to the extent an infringement claim is based upon the combination of the Licensed Software with any products or services not provided to you by SCI.

9. Reserved.

10. Reserved.

11. Other.

A. Audit. Upon 30 days written notice, and subject to Government security requirements, SCI may audit your use of the Licensed Software, but no more than once during a 12-month period. During standard business hours and upon prior written notice, SCI may visit you and you shall cooperate with SCI’s audit and provide reasonable assistance and access to information. SCI shall comply with all security requirements of your facility and shall not interfere with your normal business operations.


All Licensed Software provided to the U.S. Government is provided only with the rights described as stated in DFAR Section 227.7202, FAR Section 12.212, FAR 52.227-14 and DFARS 252.227-7015, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed by the terms of this Agreement and the applicable ordering document and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.
C. **Export Restrictions.** You acknowledge that the Licensed Software is subject to U.S. export jurisdiction. You shall comply with all applicable federal laws that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. Government.

D. **Transfer Restrictions.** You shall not assign or otherwise transfer this EULA or any portion of the Licensed Software, or any copies thereof or any of your interests in any of the foregoing, without SCI’s prior written consent. Assignment by SCI is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013). This EULA will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and permitted assigns.

E. **Reserved.**

F. **Reserved.**
SECURITY FIRST CORP. WORRY AND SUPPORT TERMS

SECURITY FIRST CORP. (“SECURITYFIRST™”) LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE

PLEASE READ THIS LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING SECURITYFIRST SOFTWARE. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE. THIS AGREEMENT INCLUDES BY REFERENCE THE LICENSE AGREEMENT ADDENDUM(S) ATTACHED HERETO.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU ARE A GOVERNMENT EMPLOYEE OR GOVERNMENT CONTRACTOR THAT HAS BEEN GIVEN THIS SOFTWARE TO INSTALL YOU HEREBY AGREE TO ABIDE BY ALL GOVERNMENT TERMS AND CONDITIONS RELATING TO THE USE AND REPRODUCTION OF THIS SOFTWARE, INCLUDING ALL GOVERNMENT RULES REGARDING COPYRIGHT PROTECTION.

IMPORTANT NOTE: The SecurityFirst software product (“Software” or “Product” or “Software Product”) is licensed to you only for transmission and/or storage of non-copylefted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to transmit and/or store.

You hereby waive to the maximum extent permitted by applicable law any claim against SecurityFirst concerning the validity or enforceability of this Agreement.

1. DEFINITIONS.
A. “Distributor” means a SecurityFirst authorized reseller, distributor, system integrator, service provider, independent software vendor, managed service provider, value-added reseller or OEM for SecurityFirst products.
B. “Product Notice” means the notices by which SecurityFirst informs its customers of its warranty, maintenance and product-specific terms. Product Notices may be delivered from time to time by SecurityFirst by means of Quotes, contract riders and / or when applicable a posting on the SecurityFirst website (see: https://support.securityfirstcorp.com/product notices/). The terms of all applicable Product Notices shall not bind the Ordering Activity unless the terms are provided for review and agreed to in writing by all parties.
C. “Purchase Order(s)” or “Order(s)” or “Quote(s)” means one or more required documents issued by SecurityFirst or a Distributor which identifies the product(s), evaluation product(s), and/or a related service(s), the applicable pricing, unit of measure, quantity of licensed units, term of the license and sufficient other information to complete the transaction (at a minimum, a Quote must identify the product or evaluation product, pricing, quantity and term).

2. AUDIT RIGHTS
If you are entering this Agreement on behalf of a U.S. Government agency, the following shall apply with respect to audit rights: Upon request, but no more than once per year, the agency shall deliver to SecurityFirst a signed statement certifying that use of the Program(s) are in compliance with the terms of the License Agreement.

3. LICENSE
Subject to your compliance with this Agreement, and payment of all initial and, if applicable, periodic license fees to SecurityFirst, SecurityFirst grants you a limited, personal, nonexclusive, and non-transferable license (with no right to sublicense) to use the Software for your internal business purposes only under the terms of this Agreement, for the number of applicable licensing units and in accordance with any other license terms or restrictions set forth in the required Quote. The Software is licensed, not sold. The terms of this Agreement will govern any Software upgrades provided by SecurityFirst that replace and/or supplement the original SecurityFirst product. Documentation is licensed solely for purposes of supporting your use of the Software as permitted in this Section, and you may host the documentation on a section of your intranet that is not publicly accessible and may make a reasonable number of copies for your internal use.

All licenses granted herein are for use of object code only. You may make one copy of the Software in machine-readable form for backup purposes only; provided that the backup copy must include all copyright or other proprietary notices contained on the original. You may not use the Software in a service bureau or similar capacity, or copy, provide, disclose, lease, loan, rent, transfer or otherwise make available any Software in any form to anyone other than your internal business purposes in a manner consistent with this Agreement. For evaluation products, you shall not disclose the results of any comparative or competitive analyses, benchmark testing, infringement testing, or analyses of SecurityFirst’s Software and hardware products to any third party. Except as otherwise agreed in writing, separate license units are required for each device/user accessing or using a product or evaluation product, notwithstanding any non-SecurityFirst technology used to reduce the number of devices/users accessing or using a product or evaluation product. You may not separate any Software for use in more than one operating system environment under a single license unit, even if the operating system environments are on the same physical hardware system. You shall be fully responsible to SecurityFirst for the compliance of your users herewith.
4. WARRANTY AND DISCLAIMER.

A. Duration. The warranty term for the Software and any hardware product shall be ninety (90) days from the date of receipt by you. Any warranty claim must be filed in writing with SecurityFirst within thirty (30) days after the end of the applicable warranty term. ANY EVALUATION PRODUCT AND ANY SOFTWARE OR HARDWARE SOURCED FROM A THIRD PARTY IS PROVIDED STRICTLY ON AN “AS IS” BASIS WITHOUT ANY WARRANTIES OR INDEMNITIES OF ANY KIND. YOU RECOGNIZE THAT ITEMS MAY HAVE DEFECTS OR DEFICIENCIES WHICH CANNOT OR MAY NOT BE CORRECTED BY SECURITYFIRST.

B. Product Warranty. For the applicable warranty term, SecurityFirst warrants that each product will substantially conform to the applicable accompanying documentation for such Product. Hardware products

(i) may be newly manufactured, (ii) may be assembled from new or serviceable used parts™ that are equivalent to new parts in performance, or (iii) may have been previously installed. No warranty shall apply to any product which has been altered, except by SecurityFirst or under SecurityFirst’s direction, or which has been handled, installed, misused (including static discharge), maintained, or operated not in accordance with SecurityFirst’s instructions. SecurityFirst does not warrant that the operation of products shall be uninterrupted or error free, or that all defects can be corrected. SecurityFirst’s entire liability and your exclusive remedy for warranty claims shall be for SecurityFirst, at its option, to use reasonable efforts to remedy the product defects or replace the affected product. If SecurityFirst is unable to make an affected product operate as warranted within a reasonable time, then SecurityFirst shall refund the amount received by SecurityFirst for the affected product upon its return to SecurityFirst or its Distributor. The foregoing shall not void any supplementary remedies made available to you by a Distributor, with respect to which SecurityFirst shall have no liability or obligation.

C. Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement, and to the maximum extent permitted by law, SecurityFirst (including its suppliers) provides all Software and hardware on an “AS IS” basis and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

5. OWNERSHIP AND RESTRICTIONS. Other than the rights expressly granted under Section 3, no other rights are granted to the Software whether expressly or by estoppel, implication, exhaustion, other doctrine of law, equity or otherwise. No title to, or ownership of, Software is transferred to you. You shall reproduce and include copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies, of the Software authorized to be copied by you. You may not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software, nor shall you permit any third party to do the same. You shall not combine or distribute Software with open source software or with software developed using open source software (e.g. tools) in a manner that subjects SecurityFirst or any portion of the Software licensed hereunder to any license obligations of such open source software including, but not limited to, the obligation to publicly disclose source software code.

6. INDEMNITY. SecurityFirst shall (i) indemnify its customers against any third party claim that Software, currently both under license and a paid support agreement with SecurityFirst or an authorized Distributor of SecurityFirst products, infringes a U.S. issued patent or registered copyright, and (ii) pay the resulting costs and damages finally awarded against a customer by a court of competent jurisdiction or the amounts stated in a written settlement signed by SecurityFirst. The foregoing obligations are subject to the following: that the customer (a) notifies SecurityFirst promptly in writing of such claim, (b) gives SecurityFirst an opportunity to intervene in any suit or claim filed against the GSA Customer, at his own expense, through counsel of his choosing, (c) reasonably cooperates in response to a SecurityFirst request for assistance, and (d) is not in material breach of this Agreement. Should any item become, or in SecurityFirst’s opinion be likely to become, the subject of a claim, SecurityFirst may, at its option and expense, (1) procure for the customer the right to make continued use thereof, (2) replace or modify such so that it becomes non-infringing, (3) request return of the product and, upon receipt thereof, refund the price paid by customer, less straight line depreciation on a three year useful life for the product, or (4) discontinue the service and refund the portion of any pre-paid service fee that corresponds to the period of service discontinuation. SecurityFirst shall have no liability under this Section 6 to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of any item provided by SecurityFirst with third party products or services, (B) use for a purpose or in a manner for which the SecurityFirst provided items were neither licensed or designed, (C) any modification made by anyone other than SecurityFirst, (D) any modifications to a SecurityFirst product or service to comply with the designs, specifications or instructions provided by you or the use of technical information or technology provided by you, (E) any technology owned or licensed by you or a Distributor from third parties, (F) any evaluation items, or (G) use of any older version of the product when use of a newer version made available to you would have avoided the infringement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute, 28 U.S.C. 516.

THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND SECURITYFIRST’S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

7. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SECURITYFIRST’S (INCLUDING SECURITYFIRST’S DISTRIBUTORS) TOTAL LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE CONTRACT PRICE PAID TO SECURITYFIRST BY YOU FOR THE SPECIFIC ITEM OR SERVICE WARRANTED OR ON AN ANNUAL BASIS WHEN APPLICABLE FROM WHICH SUCH CLAIM ARISES.

B. No Indirect Damages. TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SECURITYFIRST (INCLUDING SECURITYFIRST’S DISTRIBUTORS) SHALL NOT HAVE ANY LIABILITY FOR SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF. YOU MAY NOT BRING ANY CLAIM BASED ON PRODUCTS OR SERVICES PROVIDED HEREUNDER MORE THAN SIX (6) YEARS AFTER THE CAUSE OF ACTION ACCRUES. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY CONTRACTOR’S NEGLIGENCE; (2) FOR FRAUD; (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

C. Class Actions. [Reserved]
8. GOVERNMENT REGULATIONS AND RIGHTS.

A. Export. Items provided under this Agreement are subject to governmental restrictions on exports from the U.S. and from disclosures of technology to foreign persons. Diversion contrary to U.S. law is expressly prohibited. You shall, at your sole expense, comply with all export laws. You represent that you are not a restricted person, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (2) on any restricted person or entity list maintained by any U.S. governmental agency. Certain information, products or technology may be subject to the International Traffic in Arms Regulations (“ITAR”). This information, products or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with ITAR as applicable.

B. Rights. All Software licensed hereunder shall be considered “commercial computer software” or “commercial computer software documentation” which has been developed entirely at private expense. They are delivered and licensed as commercial computer software and commercial computer software documentation within the meaning of all applicable acquisition regulation(s). With respect to the federal or state governments, their departments, offices or agencies, either directly or through a prime contractor or subcontractor at any tier (“Government Customer”), all Software and documentation provided hereunder are “commercial item[s]” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software,” commercial “computer software documentation” and/or commercial “technical data” as such terms are used in 48 C.F.R. §§ 12.212, 252.227-7014(a) and 252.227-7015(a)(5), respectively. Consistent with 8.C.F.R. §§ 12.212, Government Customers acquire only those rights set forth herein, except that in no event shall any Government Customer have greater rights in any computer software or technical data than as set forth in 52.227-14252.227-7015, Technical Data – Commercial Items (NOV 1995), respectively. For U.S. Government Customers, FAR 52.227-3 shall apply. SecurityFirst retains all intellectual property rights in and to such items.

9. TERMINATION. With respect to evaluation products only, this Agreement shall automatically expire and terminate upon the conclusion of sixty (60) days from the initial installation of an evaluation product unless another term (not to exceed one (1) year) is otherwise provided for in an applicable Quote. For non-evaluation products, this Agreement will terminate at the end of the applicable license terms. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SecurityFirst shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, you shall cease all use and return or certify destruction of the applicable Software (including copies) to SecurityFirst. Upon termination of the Agreement, the following Sections hereof shall survive in accordance with their terms: 1, 2 (only if fees are due and owing at termination), 4.C, 5, 7, 8, 9, 10 and 11.

10. NOTICES. Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given upon receipt when delivered (i) in person, (ii) by a recognized overnight courier, with proof of receipt, or (iii) by U.S. certified or registered mail, with proof of delivery. Routine business communications (e.g., SecurityFirst’s Product Notices) may be communicated or exchanged in the ordinary course of business without formal notification. Notices to SecurityFirst shall be sent to: Security First Corp., Attn: Legal Department, 29811 Santa Margarita Parkway Suite 600, Rancho Santa Margarita, CA 92688, USA.

11. MISCELLANEOUS. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and applicable Purchase Order(s), is the complete statement of the agreement of the parties with regard to the subject matter hereof, and may be modified only by a writing signed by both parties. Excusable delays shall be governed by FAR 52.212-4(f). You or SecurityFirst shall not assign this Agreement or any right or delegate any performance without the other party’s prior written consent. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this Agreement is held unenforceable or invalid, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. This Agreement is governed by the I federal laws of United States. The U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (as well any version thereof adopted by any state in any form) shall not apply. For U.S. Government Customers, this Agreement will be governed by and construed in accordance with U.S. Federal law, including without limitation, for matters arising out of contract disputes, the mechanism for redress permitted by the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations (DFAR) and their Supplements, as applicable.

• Agreed and Accepted by:

________________________________________________________________________
(Customer)

________________________________________________________________________
(Mailing Address)

________________________________________________________________________
(Email Address)

________________________________________________________________________
(Phone Number)

________________________________________________________________________
(Date)

________________________________________________________________________
(Printed or Typed Name)

________________________________________________________________________
(Title)

________________________________________________________________________
(Signature)
LICENSE AGREEMENT ADDENDUM ("DataKeep™ Addendum")

This DataKeep Addendum represents additional terms applying only to DataKeep licensing agreements.

- Terms for the license of SecurityFirst™ Software are in the LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE. If there is a conflict in terms between the LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE and this DataKeep Addendum, the terms of this Addendum will govern.

Additional Product Terms:

- The DataKeep PPM software component is licensed under this Agreement at no additional cost and is included in the software distribution of the DataKeep agents licensed hereunder and may used only to support these and other properly licensed DataKeep agents.
- Installation of DataKeep PPM at the server level is supported as an OVA using CentOS as one or more VM’s as the Customer finds necessary to adequately support the licensed DataKeep agents (inclusive of high availability clustered management environments). Customer is permitted to install and use the licensed number and type (model) of DataKeep agent Software instances with each instance limited to one, and only one server (either bare metal or VM).
- The Software will be delivered to the Customer from SecurityFirst via digital download or some other mutually agreeable method. The Software download should then be installed on the desired server and by performing installation, Customer accepts the responsibility of remaining within the number of agent instances as licensed by this Agreement.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Siemens Industry, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 170 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific Terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms, nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it cannot sustain an exemption, in accordance with 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SIEMENS INDUSTRY, INC.**

1. Buyer’s Requirements. Timely performance by Contractor through Siemens is contingent upon Ordering Activity’s supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.

2. Limited Warranty. (a.) Limited Product Warranty Statements. For each Product purchased from Contractor or an authorized reseller, Contractor makes the following limited warranties: (i) the Product is free from defects in material and workmanship, (ii) the Product materially conforms to Siemens’ specifications that are attached to, or expressly incorporated by reference into, these terms, and (iii) at the time of delivery, Siemens has title to the Product free and clear of liens and encumbrances (collectively, the “Limited Warranties”). Warranties with respect to software which may be furnished by
Contractor as part of the Product, if any, are expressly set forth elsewhere in these terms. The Limited Warranties set forth herein do not apply to any software furnished by Contractor. If software is furnished by Contractor, then the attached Software License/Warranty Addendum shall apply.

(b.) Conditions to the Limited Warranties. The Limited Warranties are conditioned on (i) Ordering Activity storing, installing, operating and maintaining the Product in accordance with Siemens' instructions, (ii) no repairs, modifications or alterations being made to the Product other than by Contractor through Siemens or its authorized representatives, (iii) using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms, (iv) Ordering Activity discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product, (v) Ordering Activity providing prompt written notice of any warranty claims within the warranty period described below, (vi) at Contractor's discretion, Ordering Activity either removing and shipping the Product or non-conforming part thereof to Contractor through Siemens, at Ordering Activity's expense, or Ordering Activity granting Contractor through Siemens access to the Products at all reasonable times and locations to assess the warranty claims, and (vii) Ordering Activity not being in default of any payment obligation to Contractor under these terms.

(c.) Exclusions from Limited Warranty Coverage. The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by Siemens or not bearing its nameplate. To the extent permitted, Contractor hereby assigns any warranties made to Siemens for such non-Siemens equipment. Contractor shall have no liability to Ordering Activity under any legal theory for such non-Siemens equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and is provided to Ordering Activity “as is” with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as fuses and light bulbs and lamps.

(d.) Limited Warranty Period. Ordering Activity shall have 12 months from initial operation of the Product or 18 months from shipment, whichever occurs first, to provide Contractor with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of Ordering Activity, unless Ordering Activity has previously provided Contractor with notice of a breach of the Limited Warranties.

(e.) Remedies for Breach of Limited Warranty. Buyer's sole and exclusive remedies for any breach of the Limited Warranties are limited to Siemens' choice of repair or replacement of the Product, or non-conforming parts thereof, or refund of all or part of the purchase price. The warranty on repaired or replaced parts of the Product shall be limited to the remainder of the original warranty period. Unless otherwise agreed to in writing by Siemens, (i) Contractor shall be responsible for any labor required to gain access to the Product so that Siemens can assess the available remedies and (ii) Contractor shall be responsible for all costs of installation of repaired or replaced Products. All exchanged Products replaced under this Limited Warranty will become the property of Siemens.

(f.) Transferability. The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 8 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

3. Patent and Copyright Infringement. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding to the extent permitted by 28 U.S.C. 516. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes noninfringing.

Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under the provisions of the Section above.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Siren Data Intelligence, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
SOFTWARE LICENCE AGREEMENT

THIS AGREEMENT is entered into as of the date set forth in the Purchase Order, Statement of Work, or similar document (the “Effective Date”) by:

<table>
<thead>
<tr>
<th>Name</th>
<th>The GSA Multiple Award Schedule Contractor acting on behalf of Siren Data Intelligence, Inc. (&quot;Siren&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-U-N-S Number</td>
<td>11-693-5195</td>
</tr>
</tbody>
</table>
| Registered Address | 22 Mourar Dr  
Spring City, PA 19475  
UNITED STATES |
| Contact | Account Manager |
| Telephone | +353 91 704885 |
| Fax | |
| Email | accounts@siren.io |

BACKGROUND

A. Siren has developed or sublicensed the Products and provides certain maintenance and support services in relation to the Products.

B. The Customer wishes to use the Products and avail of maintenance and support services provided by Siren as detailed in this Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Siren and the Customer agree as follows:

1. LICENSE

1.1 Subject to the terms and conditions of this Agreement, including, without limitation, Customer’s payment of Fees, Siren grants to the Customer a personal, non-exclusive, non-sublicensable, non-transferable, royalty-free worldwide right and licence to use the Products for the purpose of complying with its obligations and exercising its rights under the Agreement, during the Term.

1.2 The Customer will not sell, lease, assign or otherwise transfer the rights to use the Products under this Agreement in whole or in part. In particular but without limitation the Customer will not: (i) permit any timesharing or subscription use of the Products; or (ii) permit the Products to be used for any unlawful purpose.

1.3 Except as otherwise provided by applicable law, the Customer may not copy, alter, merge, modify, adapt or make error corrections to the Products in whole or in part, including reverse engineering, disassembling or decompiling or otherwise reduce to a human-perceivable form. The Customer may not sell, loan, rent, lease, licence, sublicense, distribute, create derivative work or otherwise transfer the Products without the prior written consent of Siren. The Customer will not remove any copyright or proprietary notices from the Products; create any derivative works based on the Products or show or demonstrate the Products to any competitor of Siren. The Customer acknowledges that the Products (and any concepts, methodologies, techniques, ideas or other information contained therein or related thereto) constitutes Confidential Information of Siren and the provisions of Clause 4 shall apply to it. Siren will have no obligations or responsibilities whatsoever with respect to the Products, including, without limitation, any obligation to provide updates or support, unless otherwise stated in this Agreement.

1.4 The licence set out in this Agreement is restricted to the maximum node usage and/or the number of named user seats that is set out in Schedule A.

1.5 The Customer and/or the Customer’s outsourced service providers shall host the Products.

1.6 The Customer shall record the location of any copy of the Products and ensure there is no unauthorised copying.

2. NEW VERSIONS, MAINTENANCE AND SUPPORT

2.1 Siren may, at its discretion, prepare new versions, updates or other amendments to the Products and make these available for commercial licensing. Siren may provide such new versions and related documentation to the Customer and where required by Siren the Customer will be obligated to install Major Releases during the Term hereof under the provisions of this Agreement.

2.2 Siren will support the Customer’s use of the Products in accordance with Schedule B.
3. **PAYMENT TERMS**

3.1 The GSA Multiple Award Schedule contractor on behalf of Siren will issue an invoice for the Fees annually, unless otherwise stated in Schedule A. The Customer will pay each invoice within 30 days of receipt. The Customer will make payment in United States dollars unless otherwise stated in Schedule A. Interest will be payable on any overdue amounts on the amount of any such overdue amounts together with interest thereon at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Siren shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

4. **CONFIDENTIALITY**

4.1 “Confidential Information” means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) whether before or after the date of this Agreement which ought reasonably to be regarded as confidential including, without limitation, information relating to the Disclosing Party’s products, services, operations, processes, plans or intentions, product information, knowhow, design rights, trade secrets, market opportunities and business affairs.

4.2 During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:

   (a) will not use Confidential Information for a purpose other than the performance of its obligations or exercise of its rights under this Agreement;

   (b) will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clause 4.3, 4.4 and 4.5; and

   (c) shall make every effort to prevent the use or disclosure of Confidential Information.

4.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its Affiliates, directors, other officers, employees or agents, (a “Recipient”) to the extent that disclosure is reasonably necessary for the purposes of this Agreement provided that the Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

4.4 Each party may disclose Confidential Information if and to the extent that:

   (a) this is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;

   (b) this is required by any securities exchange or regulatory or governmental body to which that party is subject to, wherever situated, whether or not the requirement for information has the force of law;

   (c) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;

   (d) the information has come into the public domain through no fault of that party;

   (e) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid; and/or

   (f) the information was obtained by the Receiving Party from a third party who was free to divulge same PROVIDED THAT any such information disclosed pursuant to paragraphs (a) and (b) shall be disclosed only after notice to the other party.

   (g) Siren recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

4.5 The obligations of both parties as to confidentiality shall continue in force notwithstanding the termination or expiration of this Agreement.

5. **PERSONAL DATA**

5.1 Each party will comply with Data Protection Law of the United States. Each party will not use any personal data of the other party in any manner, except that each party may process personal data, for the purposes of (i) this Agreement, (ii) maintaining their administrative or customer relationship management systems, including the use of IT outsource providers, (iii) quality and risk management reviews.

5.2 The Customer acknowledges and agrees that, to the extent that it acts as a data controller, it is responsible for ensuring that it procures consent from data subjects for the processing of their personal data through the Products.
6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Customer acknowledges that all Intellectual Property Rights and any other proprietary rights in the Products shall at all times vest in and be the absolute property of Siren or its licensors, as appropriate. Save as expressly stated nothing in this Agreement shall be deemed to give either party any rights of any kind in any Intellectual Property Right belonging to the other party. The Products contain open source software licensed under the Apache license.

6.2 Siren hereby indemnifies and agrees to have the right to intervene to defend the Customer from and against all damages, losses, claims, liabilities, costs and expenses, including reasonable attorneys’ fees, arising out of any and all third party claims that the Products infringe any third party Intellectual Property Rights subject to the following conditions:

(a) the Customer shall promptly notify the Siren in writing if any third party action, claim, or other proceeding is made or threatened such as to activate any indemnity granted hereunder;

(b) the Customer must make no admissions without the indemnifying party’s prior written consent; and

(c) the Customer, at the indemnifying party’s request and expense, shall allow Siren to conduct any negotiations or litigation and/or settle any claim. The Customer shall give Siren all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for Siren’s account. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

6.3 If at any time an allegation of infringement of Intellectual Property Rights is made in respect of the Products or, if in Siren’s reasonable opinion such an allegation is likely to be made, Siren may at its own expense modify or replace the Products so as to avoid the infringement making good to the Customer any loss arising from such modification or replacement. If the Products cannot be replaced or modified within thirty (30) days then the Customer may terminate this Agreement without liability and Siren shall promptly refund to the Customer the pro rata amount of any fees paid under this Agreement.

7. WARRANTY

7.1 Each party represents and warrants to the other party that:

(a) it has full power and authority to execute and deliver this Agreement and to comply with the provisions of, and perform all its obligations and exercise all of its rights under this Agreement;

(b) it has taken all necessary action to authorise the execution and delivery of this Agreement and this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforcement may be limited by any relevant bankruptcy, insolvency, administration or similar laws affecting creditors’ rights generally;

(c) the entry into and performance of this Agreement does not and will not violate: (i) any law or regulation of any governmental or official authority or body; (ii) its constitutional documents; or (iii) any agreement, contract or other undertaking to which it or any of its Affiliates is a party or which is binding on it or any of their respective property or assets;

(d) all consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Agreement have been obtained and are in full force and effect;

(e) it is not necessary for the legality, validity, enforceability or admissibility in evidence of this Agreement that this Agreement or any document relating to it be registered, filed, recorded or enrolled with any court, registry or public authority in any relevant jurisdiction or that any stamp, registration or similar taxes be paid on or in relation to this Agreement or any document relating to it;

(f) it will comply with all applicable laws in respect of the performance of its obligations and exercise of its rights under this Agreement.

7.2 In the event of any failure of the Products to function in accordance with the documentation supporting the Products, Siren will attempt through reasonable endeavours to correct or cure any reproducible non-compliance notified to it in writing, provided always that the Products have not been misused or damaged by the Customer in any respect, and that the existence and nature of any such nonconformity or defect is promptly notified to the Customer in writing upon Siren discovering it.

7.3 Siren does not warrant that the Products will meet the Customers’ requirements. Except as expressly set forth in this Agreement, all warranties, conditions, representations, statements, terms and provisions express or implied by statute, common law or otherwise are excluded to the greatest extent permitted by law. Save as otherwise set out in the Agreement, and to the fullest extent permissible by law, Siren disclaims and excludes all warranties, conditions, representations, indemnities and guarantees with regard to the Products and any related services provided or to be provided hereunder, whether express or implied, including but not limited to warranties of noninfringement, merchantability, fitness for a particular purpose and that use of the Products will be uninterrupted or error free.

8. LIABILITY

8.1 Subject to Clause 8.3, Siren shall in no event be liable to the Customer in contract, or tort, under any law or otherwise howsoever arising for indirect, special, incidental or consequential damages, including but not limited to damages and costs incurred as a result of loss.
or corruption of data or other equipment or property, loss of business revenue, loss of profits (whether direct or indirect), loss of time, loss of savings, failure to realise expected profits or savings and any other economic loss of any kind.

8.2 Subject to Clause 8.3, Siren’s total liability for loss or damage of any kind not excluded by this Clause 8, however caused (whether in contract, tort, under any law or otherwise howsoever) arising from or in relation to the Agreement is limited in aggregate to the Fees paid by the Customer to Siren under the applicable Purchase Order(s).

8.3 Nothing in this Agreement shall limit or exclude either party’s liability for death or personal injury caused by that party’s negligence, fraud, fraudulent misrepresentation or wilful default.

9. TERM AND TERMINATION

9.1 The Agreement shall commence on the Effective Date and shall continue for the length of term set out in the information table in Schedule A ("Initial Term") unless terminated earlier pursuant to the terms of the Agreement. After expiry of the Initial Term, the term may be renewed each year for further fixed terms of one (1) year by both parties executing an option, or new purchase order in writing (each a "Renewal Term").

9.2 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Siren shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(a) .

9.3 Upon any termination or expiry of the Agreement:

(a) the licence to use the Products will terminate. The Customer will cease use of the Products, and on Siren’s written request, immediately delete the Products. The Customer’s directors will certify in writing that the Products have been deleted from the Customer’s systems.

(b) Each party shall within seven (7) days after the Termination Date return to the other party or (at the other party’s election) destroy all data, Confidential Information and all other materials of that other party in its possession, along with all copies of same and documents, memoranda, notes and other writings whatsoever prepared by it or any of its directors, officers, agents, employees, representatives or advisers for it or in its possession which incorporate any of the Confidential Information. Save that, either party may retain such materials: (i) to the extent required by law or any applicable governmental or regulatory authority; and (ii) to the extent reasonably required to permit the relevant party to keep evidence that it has performed, or the other party has failed to perform, its obligations under this Agreement.

10. Dispute Resolution

10.1 Reserved.

10.2 Reserved.

10.3 This Agreement and any dispute arising from it, will be governed by the Federal laws of the United States.

11. GENERAL

11.1 Matters beyond reasonable control - Excusable delays shall be governed by FAR 52.212-4(f):

(a) .

11.2 Reserved.

11.3 Reserved.

11.4 Entire agreement - This Agreement (including the Schedules), together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), forms the entire agreement between the parties in relation to the Products. In the event of any conflict between the main body of this Agreement and the Schedule attached at the end of it, the terms of the Schedule will prevail. This Agreement replaces any earlier agreements, representations and discussions.

11.5 Assignment –

(a) Subject to Clause 11.5(b), neither party shall be entitled to assign or sub-contract any of its rights or obligations or the licenses granted hereunder without the prior written approval of the other party (not to be unreasonably withheld).

(b) Reserved.

(c) This Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each party.

11.6 Waiver – No failure or delay by a party to exercise any right will constitute a waiver of that right nor restrict the further exercise of that right. No single or partial exercise of any right will restrict the further exercise of that or any other rights.

11.7 Changes – A change to this Agreement will be effective only when agreed in writing by both parties.

11.8 Survival - The termination of the Agreement shall be without prejudice to: (a) any rights and/or liabilities which shall have accrued before termination, including any remedy available in respect of a breach of this Agreement or (b) any provision of this Agreement which is expressed to survive termination.
11.9 Notices - Notices shall be deemed to have been received: (a) if delivered by hand, on the day of delivery if it is a Working Day in the place of receipt and otherwise on the first (1st) Working Day in the place of receipt immediately following the day of delivery; (b) if sent by pre-paid airmail, on the fourth (4th) Working Day in the place of receipt after the day of posting; (c) if sent by facsimile or email: (i) (if transmitted between 09:00 and 17:00 hours (GMT) on a Working Day in the place of receipt) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or (ii) (if transmitted at any other time) at 09:00 (GMT) on the first (1st) Working Day in the place of receipt following completion of receipt by the sender of verification of the transmission from the receiving instrument.

11.10 Counterparts - The Agreement may be executed in any number of counterparts and on separate counterparts, each of which, when executed and delivered, will be an original, and all such counterparts together will constitute one and the same instrument. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax (b) e-mail (in PDF, JPEG or other agreed format) or (c) an electronic signature service agreed between the parties, will take effect as delivery of an executed counterpart of this Agreement.

11.11 Definitions - In the Agreement the following words and expressions shall have the following respective meanings, except where the context requires a different meaning:

(a) “Affiliate” means in respect of any party, any company that controls, is controlled by, or is under common control with such party. An entity will be regarded as in control of another company or entity if it owns directly or indirectly more than 50 percent of the voting rights of that company.

(B) “DATA PROTECTION LAW” MEANS THE DATA Protection Federal laws of the United States.

(c) “Fees” means the fees to use the Products and receive the maintenance and support as set out in the final row of the information table in Schedule A in accordance with the GSA Schedule Pricelist.

(d) “Force Majeure” has the meaning set forth in FAR 52.212-4(f).

(e) “Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

(f) “Major Version” means an enhancement of a prior version of the Products that would be considered by the software industry community (of which Siren is a part) as the next generation of a Product, which is usually evidenced by an increment in the version number of the Product. By way of illustration, versions 2.0 and 3.0 are incremental major versions, whereas versions 2.0 and 2.2 are not.

(g) “Products” means the software product(s) detailed in Schedule A and any accompanying documentation.

(h) “Termination Date” means the date of termination (howsoever caused) or expiry of the Agreement.

(i) “Term” means the Initial Term and/or a Renewal Term.

(j) Reserved.

(k) “Working Day” means in respect of an obligation hereunder any day other than: a Saturday or a Sunday or a day on which commercial banks in Ireland are not open for business.
SCHEDULE A LICENCE AND PRODUCT INFORMATION
SCHEDULE B
SERVICE LEVEL AGREEMENT

This service level agreement is a part of, and is governed by, the Software Licence Agreement entered into between Siren and the Customer. The parties agree as follows:

1. DEFINITIONS
   The following terms shall have the following meanings.

   "Call Ticket" means a request for support services submitted to Siren hereunder, each being uniquely identifiable.

   "Error" means a problem that has occurred with the Products.

   "Error Correction" shall mean the completion of all activities, including, but not limited to Fixes and Problem Resolution, necessary to diagnose, resolve and/or provide a solution for a reported Error, problem or defect occurrence in the Products.

   "Error Severity Level(s)" means:

   a) "Level 1/Critical" - Any Error that causes or results in: (i) System or sub-System unavailability; (ii) the System, a System module, or major System function to be rendered inoperable, disabled or inaccessible; (iii) data corruption; and/or (iv) the prevention of critical business functions from being performed.

   b) "Level 2/Severe" - Any Error that causes or results in: (i) functional inconsistency across the System; and/or (ii) degradation of System performance.

   c) "Level 3/Important" - Any Error that causes or results in (i) incorrect functioning of navigation or validation operations with respect to the System; (ii) disabling or degradation of non-essential functions and/or (iii) Product aesthetics to be inconsistent or incorrect with respect to positioning, spelling and/or color.

   "Enhancement(s)" means changes or additions, other than Maintenance Modifications, to the Products and related documentation, including all new releases that improve functions, add new functions, screens or data sources or significantly improve performance by virtue of changes in System design or coding. Notwithstanding the foregoing, Enhancements shall not include new Major Versions of Products.

   "Fix" means a temporary bypass/workaround and/or patch of an Error performed and/or implemented so as to cause the Products to continue performing functionally in material conformance with the Documentation, operating manuals and/or the Specifications governing the Products.

   "Maintenance Modification(s)" means any modifications or revisions, other than Enhancements, to the Products and/or documentation that correct Errors, support new releases to the operating systems with which the Product is designed to operate, support new input/output devices, or provide other incidental changes, updates and corrections.

   "Problem Resolution" shall mean identification of the root cause of the Error and object code fix or new Release and supporting Documentation necessary to effectuate Error Correction.

   "Release(s)" shall mean new versions of the Products, including, without limitation, Error Corrections, Maintenance Modifications and Enhancements. Notwithstanding the foregoing, Releases shall not include new Major Versions of Products; and

   "System" shall mean the Product as configured and installed by the Customer.

2. SERVICE LEVEL - TECHNICAL SERVICE REQUESTS
2.1. Siren’s response to specific issues reported shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Production Support</th>
<th>Non-Production Support</th>
<th>24 x 7 Support</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Support Hours</strong></td>
<td>0900-1700 GMT</td>
<td>0900-1700 GMT</td>
<td>24 / 7 / 365</td>
</tr>
<tr>
<td><strong>Response Times</strong></td>
<td>Level 1: 4 Hours</td>
<td>Level 1: N/A</td>
<td>Level 1: 1 Hour</td>
</tr>
<tr>
<td></td>
<td>Level 2: 1 day</td>
<td>Level 2: 1 day</td>
<td>Level 2: 4 Hours Level</td>
</tr>
<tr>
<td></td>
<td>Level 3: 2 days</td>
<td>Level 3: 2 days</td>
<td>3: 1 day</td>
</tr>
<tr>
<td><strong>Number of Siren Call Tickets</strong></td>
<td>Unlimited</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td><strong>Number of Support Contacts</strong></td>
<td>Six (6)</td>
<td>Six (6)</td>
<td>Eight (8)</td>
</tr>
</tbody>
</table>
3. Error Correction

Siren shall use its commercially reasonable efforts to complete Error Correction(s) as follows:

<table>
<thead>
<tr>
<th>Error Severity Level</th>
<th>Error Correction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1/Critical</td>
<td>Fix: Fix completed or a mutually agreed upon date for such Fix established within one (1) Working Day of acknowledgment of receipt of Error notification.</td>
</tr>
<tr>
<td></td>
<td>Problem Resolution: Problem Resolution completed within five (5) Working Days of completion of Fix.</td>
</tr>
<tr>
<td>Level 2/Severe</td>
<td>Fix: Fix completed or a mutually agreed upon date for such Fix established within three (3) Working Days of acknowledgment of receipt of Error notification.</td>
</tr>
<tr>
<td></td>
<td>Problem Resolution: Problem Resolution completed within five (5) Working Days of completion of Fix.</td>
</tr>
<tr>
<td>Level 3/Important</td>
<td>Fix: A Fix completed or a mutually agreed upon date for such Fix established within five (5) Working Days of acknowledgment of receipt of Error notification.</td>
</tr>
</tbody>
</table>

3.1. When reporting an issue, the Customer shall provide the following information:
   a) date of problem occurrence;
   b) location of problem occurrence;
   c) detailed problem description;
   d) any steps taken by the Customer to resolve the problem; and
   e) description of the Error Severity Level of the problem.

3.2. Siren and the Customer will act in good faith to determine the Error Severity Level of each issue, however, Siren's determination of the Error Severity Level of each issue shall be final.

3.3. In all cases, Siren will use commercially reasonable efforts to correct such Error in a future Release.

3.4. Technical and maintenance support will only be made available in English.

4. TECHNICAL SUPPORT CONTACT INFORMATION

For issues regarding our products or services, use the user name and password provided for the Siren Customer Portal to access: http://support.siren.solutions
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached SmartBear Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when...
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SMARTBEAR SOFTWARE, INC.
SMARTBEAR SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

SmartBear On-Premise License Terms of Use

You may not access the Software if You are a direct competitor of SmartBear, except with Our prior written consent.

1. Definitions.

   “Documentation” means the published and generally available on-line user and administrator materials SmartBear delivers or makes available with the Software, including on-line help, as updated from time to time.

   “Maintenance and Support” mean those services provided by SmartBear as set forth in Exhibit A.

   “Maintenance Period” means (i) for all Perpetual licenses of the Software, that number of years set forth in the applicable Order for which You have purchased Maintenance and Support or (ii) for all Subscription licenses of the Software, the number of years of such Subscription set forth in the applicable Order.

   “On-Premise” means that the Software must be installed on a server, desktop, virtual machine or container on site at Your facility; all Software licensed under the terms of this Agreement is for On-Premise deployments only.

   “Order” means the purchase order entered into between You and SmartBear and identifies the Software (including the applicable SmartBear product(s), license type, license model (Perpetual or Subscription), quantity) ordered by You and any required access information. An Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

   “Perpetual” means Our grant of a license of the Software without any limitation on the duration of the license.

   “Reseller” means an authorized reseller or distributor who may sell the Software to You.

   “Software” means the SmartBear software licensed pursuant to the applicable Order and Updates provided by SmartBear, solely in object code form.

   “Subscription” means Our grant of a license of the Software for the period of time set forth in the Order (the “Subscription Term”).

   “Update” means any subsequent release of the Software that SmartBear generally makes available to its customers who are enrolled in, and have fully paid for, Maintenance and Support. Updates do not include any Software that is marketed and priced separately by SmartBear.

   “User” means an individual who is authorized by You to use the Software in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

   “You” means the Ordering Activity accepting this Agreement.

2. Who We Are.

   If You acquired Software in the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

   If You acquired Software outside of the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear (Ireland) Limited with its principal place of business at. Galway, Ireland, together with its licensors.

3. Reserved.

4. On-Premise License Grants.

   Perpetual – Subject to the terms of this Agreement, the underlying GSA Schedule contract, the Schedule pricelist, and the Order, for all licenses of the Software that are granted on a Perpetual basis, as indicated on the applicable Order, SmartBear grants You a non-exclusive, non-transferable, non-sublicensable, perpetual, limited license to install and use the Software on compatible devices without any end date. You may install and use the Software solely as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant Software product.

   Subscription - Subject to the terms of this Agreement, the underlying GSA Schedule contract, the Schedule pricelist, and the Order, for all licenses of the Software that are granted on a Subscription basis, as indicated on the applicable Order SmartBear grants You a non-exclusive, non-transferable, non-sublicensable, limited license to install and use the Software on compatible devices during the applicable Subscription Term. You may install and use the Software solely as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant Software product.

5. License Types.

   The licenses granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the following applicable terms (as specified in the applicable Order):

   Fixed (Named) License: all Software licensed under these terms are single instance, meaning it can be activated by only one User, with a unique username and password, on a single computer, computing device, or virtual machine and has a fixed license key. You must acquire and dedicate a license for each separate User that You wish to access the Software. A separate license is required for each User and may not be shared. The Software may not be reassigned other than for the permanent transfer of the Software license to another User if the eligible User is no longer employed by You. An eligible User may access the Software with a unique username and password on one device at a time.

   Floating ( Concurrent) License: all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server”, where the license is installed, and all other devices will require access to the license server to run the Software.

   Node-Locked License: all Software licensed under these terms is for use on a specified computer or computing device. This license will be “bound” to the designated computer or computing device and will only function on this computer or computing device. This license permits the use of a single instance of the Software, which functions on a single computer or computing device.

   Server Application License: all Software application licensed under these terms can be installed on one server machine and may be accessed by many Users. The license key is dedicated to the designated computer or computing device and will only function on this computer or computing device.

   Usage-Based License: all Software licensed under these terms is (i) licensed on a unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and VirtServer products.

   Freeware or Free Version License: all Software licensed under these terms is licensed to an individual User who is specifically named in the Software registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at https://community.smartbear.com.


   Delivery of the Software to You shall be made by electronic means and deemed to have occurred when the Software has been made available to You for download or by providing You with a key for such usage. SmartBear is expressly authorized by You to ship the Software upon completion of the applicable Order.
7. License Restrictions.

Your use of the Software is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Software. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Software or create or prepare derivative works based upon the Software or any part thereof; (ii) use the Software in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) decompile, disassemble or otherwise reverse engineer the Software; (iv) use the Software in contravention of any applicable laws or government regulations; (v) use the Software in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Software; (vii) use the Software to store or transmit infringing, libelous, or otherwise unlawful or libelous material, or to store or transmit material in violation of any third-party privacy rights...

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software.

Export. You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder. You acknowledge that the export of any Software is subject to export or import control and You agree that any Software or the direct or indirect product thereof will not be imported or exported (or re-exported from a country of installation) directly or indirectly, unless You obtain all necessary licenses from the U.S. Department of Commerce or other applicable agency or governmental body as required under applicable law. Without limiting the generality of the foregoing, You agree that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time. Further, you may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

8. Term.

The Term of this Agreement shall be determined based on the License Model and License Type as described herein and set forth in the Order.

Perpetual License - This term of this Agreement shall commence upon delivery of the Software; for Maintenance and Support the term of this Agreement shall continue for the one-year period following delivery and, thereafter, may be renewed at Your option for subsequent one-year periods if You issue an Order for such subsequent periods.

Subscription License - This term of this Agreement shall commence upon delivery of the Software and shall end on the last day of the Subscription Term as set forth in an Order.

Usage-Based License – The term of this Agreement is based upon the designated units of consumption as set forth in an Order.

9. Effect of Termination.

Upon any termination of this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the applicable Software and certify in writing to SmartBear within ten (10) days after termination that such Software and all copies thereof have been destroyed, purged or returned to SmartBear. Termination of this Agreement, an Order or a license granted hereunder shall not limit either party from pursuing any remedies available to it or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

10. Your Responsibilities.

You shall (i) be responsible for each User’s compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of your data and of the means by which You acquired Your data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Us promptly of any such unauthorized access or use, and (iv) use the Software in accordance with the Documentation and applicable laws and government regulations.

11. Backup of Software.

Notwithstanding anything to the contrary herein, You may make a copy(ies) of the Software for the sole purpose of backing-up and archiving the Software. Any copy of the Software is subject to all terms and conditions of this Agreement and must contain the same titles, trademarks, and copyrights as the original.

12. Virtualization Technology.

Unless otherwise restricted herein, the Software may be installed within a virtual (or otherwise emulated) hardware system as long as the use of the Software meets the terms of the license type and the virtual machines are run on hardware owned or leased by You. Virtualization technology may not be used to circumvent other licensing terms or restrictions.


Non-human devices that use the Software, whether or not without interaction, are counted as Users. Each such device that runs the Software must be properly licensed to use the Software pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.


At SmartBear’s written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Software in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at Your facilities, shall be subject to Government security requirements, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Software to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and pay all applicable fees in accordance herewith.

15. Maintenance and Support.
For Perpetual licenses, SmartBear will maintain and support licensed Software during the Maintenance Period for which You purchased Maintenance and Support. For the first year of a Perpetual license, You must purchase Maintenance and Support. After such first year, You may purchase Maintenance and Support in order to receive those services. The Maintenance Period for all Perpetual licenses shall be twelve months unless otherwise agreed upon in an Order.

For Subscription licenses You receive Maintenance and Support during the Subscription Term. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement.

In the case of both Perpetual and Subscription licenses, the term of the Maintenance Period shall commence upon the initial delivery of the Software. During a Maintenance Period, SmartBear will provide you with technical support services (“Support Services”), including Updates, to the extent such Support Services are provided for in the applicable Order, all in accordance with SmartBear’s Product Support Manual attached hereto as Exhibit A. In addition, as part of the Support Services, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

16. Reserved.

17. Data Privacy.

Data Privacy: The terms and conditions of SmartBear’s Privacy Policy is attached hereto as Exhibit B. By your acceptance of the terms of this Agreement or use of the Software, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as written in Exhibit B. International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data.

In addition to any other information transmitted as specified in the Privacy Policy, SmartBear's Software may transmit license and/or product usage data at the time of installation, registration, use or update in order to activate your license and provide You with update notifications, protect You and SmartBear against unauthorized or illegal use of the Software, and improve customer service and the product itself. We are permitted to create aggregated anonymous data based on activities and use of all Users. Upon creation, We will be the owner of such aggregated data and may use and copy such data, in our discretion, for any lawful purpose. This process does not collect or communicate any proprietary application data. A User may disable the collection of certain licenses and/or product usage data through the Software's settings menu.

Feedback: You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Software and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Software and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to, Us and that we may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

18. Ownership.

Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to the Software, as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers. SmartBear and other trademarks contained in the Software are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, “open source” or “freeware” software (“Third Party Components”). You acknowledge Third Party Components may have additional or other license terms. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear’s modifications to such Third Party Component as required, available by written request to SmartBear at the following address: support@smartbear.com.

The provision of source code, if included with the Software, does not constitute transfer of any legal rights to such code, and resale or distribution of all or any portion of all source code and intellectual property is strictly prohibited hereunder. All Software and other files remain SmartBear’s exclusive property. If source code or modifiable files are provided, regardless of any modifications that You make, You may not redistribute any such source code or modifiable files unless SmartBear has expressly designated these as re-distributable in writing.

19. Limitation of Remedies.

SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Software and the medium on which it was originally provided to You is free from any virus at the time of delivery; (c) for a period of thirty (30) days following the initial delivery of the Software to You (the "Warranty Period"), the Software will perform in substantial conformity with the Documentation; and (d) any Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear’s sole obligation for SmartBear’s breach of 19(c), is that SmartBear will, at its option, and at no cost to (a) provide remedial services necessary to enable the Software to conform to the warranty, or (b) replace any defective Software or media to enable the Software to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Software. SmartBear’s warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects if the Services are not performed as warranted in this Section 20(d) then, upon written request, SmartBear shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to You, provided that this warranty shall only survive for ninety (90) days following the completion of the Services. We provide no warranty or remedy for a Trial Version, Freeware or Free Version of the Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE
2. "Update" means any subsequent release of the Software that SmartBear generally makes available to its SaaS customers as part of the Services.

"Subscription" means Our grant of the right to access and use the Software through the Services for the period of time or usage set forth in the applicable Order (the "Subscription Term").

"Software" means the SmartBear software provided as part of the Services pursuant to the applicable Order, and all Updates, if any, unless otherwise provided in the Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Reseller" means an authorized reseller or distributor who may sell the Services to You and SmartBear against unlicensed or illegal use of the Services, and improve customer support, sales, and marketing efforts.

"Order" means the purchase order entered into between You and SmartBear, which identifies the Services (including the applicable product(s), license type, license model (duration or usage-based), quantity/term) ordered by You and any required access information. Any Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Reseller" means an authorized reseller or distributor who may sell the Services to You.

"Software" means the SmartBear software provided as part of the Services pursuant to the applicable Order, and all Updates, if any, unless otherwise provided in the Order that has been accepted by SmartBear.

"Maintenance and Support" means those technical support and related services provided by SmartBear as set forth at Exhibit A.

"Order" means the purchase order entered into between You and SmartBear, which identifies the Services (including the applicable Software product(s), license type, license model (duration or usage-based), quantity/term) ordered by You and any required access information. Any Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Reseller" means an authorized reseller or distributor who may sell the Services to You.

"Software" means the SmartBear software provided as part of the Services pursuant to the applicable Order, and all Updates, if any, unless otherwise provided in the Order that has been accepted by SmartBear.

"Services" means the Hosted Services, together with Maintenance and Support, as provided to you during the Subscription Term based on the applicable Order.

"Subscription" means Our grant of the right to access and use the Software through the Services for the period of time or usage-based limit set forth in the Order (the "Subscription Term").

"Update" means any subsequent release of the Software that SmartBear generally makes available to its SaaS customers as part of the Services; Updates do not include any Software that is marketed and priced separately by SmartBear as part of the Services.

"User" means an individual who is authorized by You to use the Services in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

"You" means the Ordering Activity accepting this Agreement.

2. Who We Are.
If You acquire access to, and use, the Services from in the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

If You acquire access to, and use, the Services from outside of the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear (Ireland) Limited with its principal place of business at 3rd Floor Dockgate, Unit 19, Merchants Rd., Galway, Ireland, together with its licensors.

3. Reserved.

4. Services Grants.

Subject to the terms of this Agreement, the underlying GSA Schedule contract, Schedule pricelist, and the Order, and during the Subscription Term, SmartBear grants You a nonexclusive, non-transferable, non-sublicensable, limited license to access and use the Services, Documents, and Data, and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server”, where the license is installed, and all other devices will require access to the license server to run the Software.

Floating (Concurrent) License: all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server”, where the license is installed, and all other devices will require access to the license server to run the Software.

Usage-Based License: access to the Services licensed under these terms is (i) licensed on a time-based or unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and VirtServer products.

Freeware or Free Version License: all Services licensed under these terms are licensed to an individual User who is specifically named in the Services registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at https://community.smartbear.com.


Your use of the Services is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Services. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Services or create or prepare derivative works based upon the Services or any part thereof; (ii) use the Services in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) attempt to decompile, disassemble or otherwise reverse engineer the Services or any part thereof; (iv) use the Services in contravention of any applicable laws or government regulations; (v) access the Services in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Services; (vii) create duplicate accounts or make the Services available to anyone other than Users, or (viii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. To the extent the Services are used to monitor web sites or devices You do not own, then You shall not publish or otherwise disclose data acquired about such web sites or devices unless express consent is given to You by the web site or device owner; further you shall not (1) interfere with or disrupt the integrity or performance of the Services or third party data contained therein, or (2) attempt to gain unauthorized access to the Services or their related systems or networks.

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Services and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Services.

Export. You may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any Software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, You acknowledge and agree that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

7. Term.

The Term of this Agreement shall be determined based on the License Model and License Type as described herein and set forth in the Order. The Subscription Term begins on the date that SmartBear grants You access to the Services and continues for twelve (12) months thereafter, unless either (i) the Subscription is usage-based (see below) or (ii) a multi-year, or other, agreement is otherwise agreed upon in an Order (“Initial Term”). In the event that the Subscription is usage-based, the term of this Agreement is based upon the designated units of consumption as set forth in an Order.

8. Effect of Termination.

Upon any termination of this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the Services. Termination of this Agreement, an Order or a license granted hereunder shall not limit either party from pursuing any remedies available to it or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

9. Your Responsibilities; Login Credentials.
You shall (i) be responsible for each User’s compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services by third parties, (iv) protect the Services and the documentation, applicable laws and government regulations, (v) be responsible for obtaining and maintaining all telephone, computer hardware, Internet access services and other equipment or services needed to access and use the Services and all costs and fees associated therewith.

Data Responsibility. You are solely responsible for (a) Your Data, (b) the accuracy, quality, and legality of Your Data, (c) the means by which You acquired Your Data, including ensuring that Your Data does not infringe upon or violate the rights of any person or entity, (d) third party claims relating to Your Data, and (e) responding to any person claiming Your Data violates such persons rights, including notices pursuant to the Digital Millennium Copyright Act.

SmartBear will provide You with credentials to assign usernames and passwords to each User (“Login Credentials”) in order to access and use the Services. In connection with the foregoing, You agree to (i) maintain as confidential all Login Credentials and not distribute or disclose any such Login Credentials and (ii) use the administrator account to assign the authorized number of Login Credentials to each User. Further, You shall be responsible for the Login Credentials, which shall be maintained confidentially and not be distributed or disclosed. You shall immediately terminate Login Credentials upon knowledge or belief that any User is or may be subject to a breach of this Agreement and, at your own expense, provide all equipment, operating systems, web browser and internet access, etc. needed to access and use the Services in accordance with the Documentation.

10. Non-Human Devices. Non-human devices that access or use the Services, whether or not without interaction, are counted as Users. Each such device that accesses or uses the Services must be properly licensed to use the Services pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.

11. Usage Verification. At SmartBear’s written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Services in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at your facilities, shall be subject to Government security requirements, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Services to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and SmartBear shall invoice You for all applicable fees in accordance herewith.

12. Maintenance and Support. Your Subscription to the Services includes Maintenance and Support during the Subscription Term. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement. During the Subscription Term, SmartBear will provide you with Maintenance and Support, including Updates, all in accordance with SmartBear’s Product Support Manual attached hereto as Exhibit A. In addition, as part of Maintenance and Support, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

13. Reserved.

14. Data Privacy. Data Privacy. The terms and conditions of SmartBear’s Privacy Policy is attached hereto as Exhibit B. By your acceptance of the terms of this Agreement or access or use of the Services, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as written in Exhibit B. International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data.

In addition to any other information transmitted as specified in the Privacy Policy, the Services may transmit license and/or product usage data at the time of registration, use or update in order to activate your access and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Services, and improve customer service and the Services. By accessing the Services, You authorize SmartBear to create aggregated anonymous data based on activities and use of all Users. Upon creation, we will be deemed to be the owner of such aggregated anonymous data and may use and copy such data, in our discretion, for any lawful purpose. The Services do not collect or communicate any proprietary application data. SmartBear may elect to provide the User with the ability to disable the collection of certain license and/or product usage data through the settings menu in the Services.

Feedback. You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Services and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Services and/or Documentation (collectively “Feedback”). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to Us and that We may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

15. Ownership. Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Services, as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers. SmartBear and other trademarks contained in the Services are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Services.

Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, “open source” or “freeware” software (“Third Party Components”). Third Party Components may be licensed under additional or other license terms that accompany such Third Party Components. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, SmartBear may require a license for that component.

16. Limited Warranty; Remedies. SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Services free from any
EXHIBIT A
SMARTBEAR PRODUCT SUPPORT MANUAL

Introduction
This document explains the procedures that are basic to an understanding of SmartBear Software’s Product Support Services.

Purpose
The purpose of the Product Support Manual is to provide information about SmartBear Software Product Support services so Customers can access SmartBear’s Product Support to obtain effective and timely solutions.

Audience
The audience for this document is:
- SmartBear Customers
SmartBear Employee

SmartBear Product Support Procedures

- SmartBear provides assistance in several ways.
- Our customers or trial prospects can access online information via our SmartBear website, www.smartbear.com. Our web-site contains online documentation, troubleshooting, and many other tools that will help you get the most out of our products.
- We also have several community forums for SmartBear products in which you can find responses to various questions asked from other customers. This is also where you can post your own question. Both our customers and SmartBear monitor these forums and provide answers.
- Finally, if you cannot find an answer to your question via our web-site, you can also submit a ticket to our Customer Care team via our web-site by selecting the contact support button at the bottom of the support page.
- For some of the products, we also provide chat and telephone support. Please see more detail regarding this below.
- Support Services will be available to individuals who have been named, in writing, by customers or prospects eligible to receive support. Support eligibility requires an active maintenance contract, current product subscription, or a valid trial license.

Contacting Support

When our support teams receive your ticket, an individual will review the information you provide with the objective to provide an answer on our initial response. Our goal is to respond in the time frames mentioned below. This will be based on the urgency of the situation and product. Sometimes we do not have all of the information to provide an answer or we may need to perform more research before providing an answer. In these scenarios our initial response will be to let you know we have reviewed the information and what our next steps will be.

We will also provide updates on a regular basis. The time frames of these updates are documented below.

Our team also tracks our dialogue with you as well as captures and tracks any information you have provided us such as log files, screen captures, etc. This information is tracked in our ticketing system. Consequently you’ll able to find out the status of your ticket simply via our updates or by contacting us.

If the support engineer who initially took your issue requires assistance from someone, he/she will either consult with a colleague or escalate your issue to a more skilled engineer, e.g. senior technical support engineer, developer, etc. The timeframe of these escalation goals are driven by the severity of the issue and are listed below.

If you feel you are not receiving the appropriate response for an issue, please check to make sure we understand the urgency of the situation properly. You can also contact your Account Manager or Customer Success Manager who will ensure the appropriate manager is aware of your situation.

Product Support Services

SmartBear Support Services are accessible via the telephone, chat, our web-form, our web-site and forums. Access, availability, response time, escalation time and follow-up time is product dependent.

Product Support – Access and Availability Table

This following table describes the access venue and availability times for each product area.
The SmartBear Software Product Support organization has established service-level objectives regarding the timing of the Initial Response provided to our Customers when a new support case is received as well as for Follow Up communication regarding the status of open cases.

### Initial Response

Initial Response is defined as the first communication from Product Support acknowledging receipt and review of a support request. New tickets will be created either automatically by a web-form or manually by a Technical Support team member. When a ticket is created automatically, the submitter will receive an automatic response which will include the ticket number which we use for tracking purposes. This is part of the initial response.

The initial response is completed when a Product Support team member acknowledges receipt of the ticket. This can be a follow-up from an automatic submission or initial entry of the ticket when submitted via phone or chat.

During the initial response, the support engineer may request additional information or may communicate that additional research is required. The support engineer may also escalate to a more skilled engineer if required.

The Initial Response may be provided in various forms including:
- Via a support ticket response from Product Support, which would include the assigned case number, status, and next steps
- If applicable via a customer’s first telephone or chat contact with the Product
Support organization during which the issue was discussed with a Support Representative.

Follow-Up Communications

SmartBear Software Product Support defines Follow-up as communication between the assigned Support Representative and the Customer. This may include a status update, additional information exchange and/or next steps. Communication may be in many forms such as the telephone, chat (if applicable), e-mail or directly updating the case information if it is available to the customer online.

Escalation

SmartBear Software Product Support defines Escalation as the protocol under which Product Support will escalate a case to higher skilled individuals in which their assistance is required to move a case forward. For example, when an issue needs additional help from development, the support representative will escalate to the development manager. Priority Definitions

SmartBear will commit to initial response, follow-up and escalation times based on the severity of an issue. These severities are defined by product state or behavior so we can be as transparent as possible and set the proper expectations with you, our customer. The table below lists these severity definitions.

Priority Definitions Table

<table>
<thead>
<tr>
<th>Product</th>
<th>Urgent/Sev 1</th>
<th>High</th>
<th>Standard</th>
</tr>
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</table>
| SaaS               | A significant number of customers are impacted by the service, product, or major feature being unavailable. No reasonable workaround is available. | Service Behaviors defined under urgent, but is impacting a moderate number of customers.  
• Is reproducible  
• A workaround is available that is reasonable in the short-term, but not in the long-term. | Minimal operational impact  
• Cosmetic Issue  
• Efficiency Issue  
• Convenience Issue  
• Operational workaround available  
• Usage Clarification that does not impact work performance |
| AlertSite          |                                                                         |                                                                     |                                                                      |
| QACOMPLETE         |                                                                         |                                                                     |                                                                      |
| SwaggerHub         |                                                                         |                                                                     |                                                                      |
| Enterprise         |                                                                         |                                                                     |                                                                      |
| AQttime Pro        |                                                                         |                                                                     |                                                                      |
| Collaborator       |                                                                         |                                                                     |                                                                      |
| LoadComplete       |                                                                         |                                                                     |                                                                      |
| QACOMPLETE         |                                                                         |                                                                     |                                                                      |
| Ready!API          |                                                                         |                                                                     |                                                                      |
| SoapUI NG          |                                                                         |                                                                     |                                                                      |
| LoadUI NG          |                                                                         |                                                                     |                                                                      |
| Secure Pro         |                                                                         |                                                                     |                                                                      |
| ServiceV           |                                                                         |                                                                     |                                                                      |
| TestServer         |                                                                         |                                                                     |                                                                      |
| TestComplete       |                                                                         |                                                                     |                                                                      |
| TestLeft           |                                                                         |                                                                     |                                                                      |

Initial Response, Escalation and Follow-Up Goals

The following matrix describes our response time, escalation time and follow-up time for each product and priority area. When reporting a case (see product support procedures above) it is imperative that you, the customer, provide us with enough information so we can determine the proper severity. Incorrect severity assignment can lead to improper response on our part which could impact your ability to get the most out of our products.

If you feel an issue is of an urgent nature, please use the most expeditious reporting mechanism available to ensure proper response.

Please note, response times and escalation times only apply to phone, chat and web-form.

Response Time Table – Includes First Response, Follow-up and Escalation based on business hours (one day is defined as one business day).
Update Policy

Product defects and enhancement requests are reviewed regularly by the SmartBear Software Product Management and Development organizations to assess whether the request represents an enhancement or defect and if it is assigned the appropriate priority. Product Management will determine, based upon the assigned priority, whether a patch will be made available for the current generally available release or whether an issue will be addressed in a future release through an update.

All defects and enhancements must be reported using the instructions provided in the Product Support Procedures at the beginning of this document.

. Enhancements

An enhancement is any additional feature or function that would make the product easier to use, improves workflow or end-user experience, embeds new technology, or provides easier integration with other application or databases. An enhancement is not of an urgent nature, but is an improvement on the current product. Enhancements are therefore handled as a standard priority matter.

. Defects

A software defect is a flaw in the product that is not working as designed or documented and impedes the workflow of a client.

Defect/Enhancement Priorities

Product Management determines the priority of defects. The defect priority drives when a fix will be available. Refer to the Severity Definitions for an explanation of each priority.

Urgent / Sev 1 Priority – SmartBear Software will work to provide a patch or work around that can be applied to the current generally available product release.

High Priority – SmartBear Software will consider a patch or work around for the current generally available product release or will work to provide the fix in a future maintenance release.

Standard Priority – SmartBear Software will consider a fix for a future major release based on market indicators.
SMARTBEAR PRIVACY POLICY

This Privacy Policy details certain policies implemented throughout SmartBear governing SmartBear’s use of personally identifiable information about users of our Site and users of our services and/or software that is available for download on this Site. SmartBear complies with the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personally identifiable information from European Union member countries and Switzerland. To learn more about the Safe Harbor program, please visit http://www.export.gov/safeharbor/.

For purposes of this Privacy Policy, “personally identifiable information” shall mean any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity. The following applies solely to the extent that SmartBear collects personally identifiable information directly from individuals.

PRIVACY POLICY UPDATES

Due to the Internet’s rapidly evolving nature, SmartBear may need to update this Privacy Policy from time to time. If we make changes to this policy, both parties shall, in writing, update this Exhibit B. Your continued use of this Site and/or continued provision of personally identifiable information to us will be subject to the terms of the then-current Privacy Policy set forth in this Exhibit B.

INFORMATION COLLECTION AND USE

You can generally visit our Site without revealing any personally identifiable information about yourself. However, in certain sections of this Site, we may invite you to participate in surveys, questionnaires or contests, contact us with questions or comments or request information, participate in chat or message boards, or complete a profile or registration form. Furthermore, we require you to complete a registration form to access certain restricted areas of the Site, to use certain services and when you download any application software. Due to the nature of some of these activities, we may collect personally identifiable information such as your name, e-mail address, address, phone number, password, screen name, credit card information and other contact information that you voluntarily transmit with your on-line and in-person communications to us and personally identifiable information that you elect to include in your chat and message board postings.

If you use a forum on this Web Site, you should be aware that any personally identifiable information you submit there can be read, collected, or used by other users of these forums, and could be used to send you unsolicited messages. We are not responsible for the personally identifiable information that is submitted in these forums and we do not control or monitor any such communications.

We receive permission to post testimonials that include personally identifiable information prior to posting.

To facilitate product support, product development and improvement, product marketing campaigns as well as other services to you, the SoapUI 5.1.2 Software and newer versions may transmit to SmartBear application usage data regarding usage metrics such as which features you have opted-in to receiving software updates in to receiving software updates and our customers and to improve our software and services.

SmartBear will not provide any information gathered in connection with the use of the SoapUI 5.1.2 Software to any third party except (i) as may be required by law or legal process, or (ii) to enforce compliance with its terms of use. A User may disable the transmission of this information at any time through the software’s settings menu.

ORDERS

If you purchase a product or service from us, we request certain personally identifiable information from you on our order form. You must provide contact information (such as name, e-mail, and shipping address) and financial information (such as credit card number, expiration date). We use this information for billing purposes and to fill your orders. If we have trouble processing an order, we will use this information to contact you.

We use your personally identifiable information to register you to use our services or download software or other content, contact you to deliver certain goods, services or information that you have requested, provide you with notices regarding goods or services you have purchased, provide you with notices regarding goods or services that you may want to purchase in the future, verify your authority to enter our Site, receive updates and improve the content and general administration of the Site, our software and our services.

In addition, we may collect information about the performance, security, software configuration and availability of our software on your servers and network in an automated fashion as part of the SmartBear software licensing. If you have opted-in to receiving software updates automatically from SmartBear, the software may report to us, and we may collect, your IP address, operating system type and version, web server type and version, php version, database type and version, version of the services, modifications to any of the Software or services, website user statistics such as the number of nodes, number of users and number of comments. The foregoing information will be linked to your personally identifiable information and user accounts and we may use the foregoing information to better provide technical support to you and our customers and to improve our software and services.

If you subscribe to one of SmartBear’s software as a service offerings you agree that SmartBear may aggregate data and information relating to your usage of the service, which we may use to better provide technical support to you and our customers and to improve our software and services.

If you choose to contact us by e-mail, we will not disclose your contact information contained in the e-mail, but we may use your contact information to send you a response to your message. Notwithstanding the foregoing, we may publicly disclose the content and/or subject matter of your message, therefore, you should not send us any ideas, suggestions or content that you consider proprietary or confidential. All e-mail content (except your contact information) will be treated on a non-proprietary and non-confidential basis and may be used by us for any purpose.

COMMUNICATIONS FROM THE SITE SPECIAL OFFERS AND UPDATES

We will occasionally send you information on products, services, special deals, and promotions. Out of respect for your privacy, we present the option not to receive these types of communications. Please see the “Choice and Opt-out” section of this Privacy Policy.

NEWSLETTERS

If you wish to subscribe to our newsletter(s), we will use your name and e-mail address to send the newsletter to you. Out of respect for your privacy, we provide you a way to unsubscribe from these types of communications. Please see the “Choice and Opt-out” section of this Privacy Policy.

SERVICE-RELATED ANNOUNCEMENTS

We will send you strictly service-related announcements on rare occasions when it is necessary to do so. For instance, if our service is temporarily suspended for maintenance, we might send you an email notification.

Generally, you may not opt-out of these communications, which are not promotional in nature. If you do not wish to receive them, you have the option to deactivate your account.

CUSTOMER SERVICE
Based upon the personally identifiable information you provide us, we may send you a welcoming email to verify your username and password. We will also communicate with you in response to your inquiries, to provide the services you request, and to manage your account. We will communicate with you by email or telephone, in accordance with your wishes.

**CHOICE AND OPT-OUT**

We provide you the opportunity to 'opt-out' of having your personally identifiable information used for certain purposes, when we ask for this information.

If you no longer wish to receive our communications, you may opt-out of receiving them at any time by following the instructions included in each communication, by going go to our Unsubscribe page, or by mail at 100 Cummings Center, Suite 234N, Beverly, MA 01915, USA.

You will be notified when your personal information is collected by a third party that is not our agent/service provider, so you can make an informed choice as to whether or not to share your information with that party.

**EMPLOYMENT OPPORTUNITIES**

We will comply with the notice and choice principles as described above for all data which is disclosed or transferred.

We will not sell your personally identifiable information to any company or organization.

**DISCLOSURE AND ONWARD TRANSFER**

We will not sell your personally identifiable information to any company or organization, except we may transfer your personally identifiable information to a successor entity upon a merger, consolidation or other corporate reorganization in which SmartBear participates or to a purchaser or acquirer of all or substantially all of SmartBear’s assets to which this Site relates. We may provide your personally identifiable information and the data generated by cookies and the aggregate information to parent, subsidiary or affiliate entities within SmartBear’s corporate family, partner entities that are not within SmartBear’s corporate family and vendors and service agencies that we may engage to assist us in providing our services to you. For example, we may provide your personally identifiable information to a credit card processing company to process your payment.

SmartBear will comply with the notice and choice principles as described above for all data which is disclosed or transferred to third party entities. SmartBear will obtain assurances from such entities that they will safeguard personally identifiable information consistent with this Privacy Policy. Such third party entities may be obligated to protect your personally identifiable information by requiring such party to enter into written confidentiality agreements with SmartBear or to have certified or agreed in writing to its adherence with the EU Safe Harbor Principles.

We will disclose your personally identifiable information (a) if we are required to do so by law, regulation or other governmental authority or otherwise in cooperation with an ongoing investigation of a governmental authority, (b) to enforce SmartBear Terms of Use agreement or to protect our rights or (c) to protect the safety of users of our Site and our services.

The Site may provide links to other Web sites or resources over which SmartBear does not have control ("External Web Sites"). Such links do not constitute an endorsement by SmartBear of those External Web Sites. You acknowledge that SmartBear is providing these links to you only as a convenience, and further agree that SmartBear is not responsible for the content of such External Web Sites. Your use of External Web Sites is subject to the terms of use and privacy policies located on the linked to External Web Sites.

**SECURITY**

We employ procedural and technological measures that are reasonably designed to help protect your personally identifiable information including sensitive data such as your credit card information from loss, unauthorized access, disclosure, alteration or destruction. SmartBear may use encryption, secure socket layer, firewall, password protection and other physical security measures to help prevent unauthorized access to your personally identifiable information including sensitive data. SmartBear may also place internal restrictions on who in the company may access data to help prevent unauthorized access to your personally identifiable information.

**UPDATING AND DELETING PERSONALLY IDENTIFIABLE INFORMATION**

SmartBear provides you with the ability to review and update the contact information that you provide to us and account information retained by SmartBear related to your previous purchase, download or payment activities. If you wish to review and/or update any of the foregoing information, you may access your account and review and update your personally identifiable information or you may contact us at the e-mail, phone or mail address listed below.

SmartBear will also delete the personally identifiable information that you have provided to us: (a) upon your request or (b) upon termination of your SmartBear account; provided, however, SmartBear will retain a copy in its files of all personally identifiable information, if required for legal reasons.

If you wish to review, correct or request the deletion of any information you have provided to us, contact us by email at privacy@smartbear.com or by regular mail at 450 Artisan Way, Somerville, MA 02145, Attention: Legal. We also give you the option for changing and modifying information previously provided by visiting www.smartbear.com, where you can log into your account to update your contact information.
ENFORCEMENT
Individuals who wish to file a complaint or who take issue with this Privacy Policy should direct such communication to SmartBear via e-mail at the address provided above. SmartBear will explain the process to be followed when filing a complaint. Filing a complaint in English will expedite the process. SmartBear will investigate and attempt to resolve complaints and disputes regarding use and disclosure of personally identifiable information in accordance with the principles contained in this Privacy Policy. SmartBear is also subject to the jurisdiction of the US Federal Trade Commission. You may contact it at: Federal Trade Commission, Attn: Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

QUESTIONS
If you have any questions about this Privacy Policy, the practices of this Web Site, or your dealings with this Web Site or SmartBear, you can contact us by email at privacy@smartbear.com. We will respond to your request within 30 days.

 USERS OUTSIDE OF THE UNITED STATES OF AMERICA
Many of our computer systems are currently based in the United States, so your personal data will be processed by us in the U.S. where data protection and privacy regulations may not offer the same level of protection as in other parts of the world, such as the European Union. If you create a user account with our Web Site as a visitor from outside the United States, by using the Site, you agree to this Privacy Policy and you consent to the transfer of all such information to the United States, which may not offer an equivalent level of protection of that required in the European Union or certain other countries, and to the processing of that information as described in this Privacy Policy.

THIS PRIVACY POLICY IS EFFECTIVE AS OF: MARCH 11, 2015
Legacy Assurance - Hardware Repair Agreement
(SVC-1320)

Thank you for purchasing Spirent Communications' Legacy Assurance - Hardware Repair program. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Repair for any hardware failures, once failure is confirmed by Customer Service. Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA#), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.
- Telephone support to confirm hardware failure, during regular local business hours.

Contact our Customer Service team, or your local distributor, for any support needs related to products covered by this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account.

Additional terms of the Legacy Assurance - Hardware Repair program are as follows:

1. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this agreement.
2. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
3. In cases where the product cannot be repaired, Spirent will contact the customer to discuss the options available.
4. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.
Support Maintenance
Legacy Assurance - Hardware Repair Agreement
Agreement Number:

Appendix A

Hardware products covered under this Support Services Program:

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Americas</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
<td>27349 Agoura Road Calabasas</td>
<td>Spirent Communications 21G, Rue Jacques Cartier – RDC 78960 Voisins Le Bretonneux - France +33 1 6137 2170 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Spirent Communications Room 1302,Shining Tower,No.35 Xueyuan Road,Haidian District Beijing,100191,China +86 400-810-9529 (mainland) +86 (10) 82-33-00-33 Support Hours: 9:00AM – 6:00PM GMT+8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>

Americas
27349 Agoura Road Calabasas
CA, 91301 1-800-SPIRENT
(1-800-774-7368)
1-818-676-2616 Support Hours:
8:30AM ET - 6:00PM PT
Email: support@spirent.com
Support Maintenance
Extended Support Agreement
(SVC-1015)

Attn: 
Name: 
Address: 
City/State/Country: 
Contract Number: 
PO Number: 
Account: 
Start Date: 
Expiration Date: 

Thank you for purchasing Spirent Communications' Extended Support. The specific hardware and software listed in Appendix A shall be entitled to the following support for the term of the agreement:

- **Repair or replacement**, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time). Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.

- **Telephone support** from technical support engineers during regular local business hours.

- **Escalation of service requests** by our technical support engineers.

- **Software and Firmware updates** for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).

- **Access to our software download center** on our exclusive online Customer Service Center at [http://support.spirent.com](http://support.spirent.com) to take advantage of Spirent’s continual product improvements.

- **Email notification**

- **Access To Computer Based Training Materials** to help you get the most from using your Spirent products of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.

- **Access to latest product documentation** to help you effectively utilize your investment.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.
Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirentcom.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

<table>
<thead>
<tr>
<th>Americas</th>
<th>India</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
</table>
| 27349 Agoura Road | **India**  
27349 Agoura Road  
Calabasas CA, 91301  
1-800-SPIRENT  
(1-800-774-7368)  
1-818-676-2616  
Support Hours: 8:30AM ET - 6:00PM PT  
Email: support@spirent.com | **Spirent Communications (India) Pvt. Ltd**  
9th Floor, Umiya Business Bay, Tower-1 Cessna  
Business Park, Kadubeesanahalli  
Marath halli — Sarjapur Outer Ring Road  
Bangalore - India 560 037  
1 800 419 2111  
Direct +91 80 67023400  
Support Hours: 9:00AM - 6:00PM GMT +5:30  
Email: support@spirent.com | **Spirent Communications Business Park Le Val**  
Saint Quentin  
2 rue René Caudron, Bât. G - France  
+33 1 6137 2270  
0800-111-4363 (UK only)  
Support Hours: 9:00AM  
6:00PM GMT +1  
Email: support@spirent.com | **Room 1302, Shining Tower, No.35**  
Xueyuan Road, Haidian  
District  
Beijing, 100191, China  
+400-810-9529  
(Mainland)  
+86-400-810-9529 (Rest of APAC)  
Support Hours: 9:00AM - 6:00PM GMT +8  
Email: support@spirent.com |


Terms of service response time with Extended Support are as follows:
Additional *response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

<table>
<thead>
<tr>
<th>Issue Severity</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical</td>
<td>System is inoperative or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established.</td>
<td>4 Hours</td>
</tr>
<tr>
<td>Urgent</td>
<td>System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established</td>
<td>8 Hours</td>
</tr>
<tr>
<td>Normal</td>
<td>System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established</td>
<td>12 Hours</td>
</tr>
</tbody>
</table>

Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

Additional terms of Extended Support are as follows:
1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
4. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may continue to utilize prior versions.
5. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes optional features or enhancements.
6. Spirent shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
7. This agreement does not cover hardware products which have been designated as “obsolete” as defined by Spirent’s
Advanced Lifecycle Management policy which can be found on Spirent's website.

8. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

9. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States;(b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.
Support Maintenance
Extended Support Agreement

Contract Number:

Appendix A
Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

Americas
27349 Agoura Road
Calabasas CA, 91301
1-800-SPIRENT
(1-800-774-7368)
1-818-676-2616
Support Hours: 8:30AM ET - 6:00PM PT
Email: support@spirent.com

India
Spirent Communications (India) Pvt. Ltd
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli
Marath halli – Sarjapur Outer Ring Road
Bangalore - India 560 037
1 800 419 2111 Direct +91 80 67023400
Support Hours: 9:00AM - 6:00PM GMT + 5:30
Email: support@spirent.com

Europe - Middle East - Africa
Spirent Communications
Business Park Le Val
Saint Quentin
2 rue René Caudron, Bât. G - France
+33 1 6137 2270
0800-111-4363 (UK only)
Support Hours: 9:00AM - 6:00PM GMT +1
Email: support@spirent.com

Asia Pacific
Room 1302, Shining Tower, No.35
Xueyuan Road, Haidian District
Beijing, 100191, China
+400-810-9529
(Mainland)
+86-400-810-9529 (Rest of APAC)
Support Hours: 9:00AM - 6:00PM GMT+8
Email: support@spirent.com
One year Warranty Agreement (SVC-1001)

Attn: __________________________________________________________
Name: __________________________________________________________
Address: _________________________________________________________
City/State/Country: ____________________________________________

Contract Number: ___________________________ PO Number: ______________
Account: ___________________________ Start Date: ________________________
Expiration Date: ____________________________________________________

Thank you for purchasing Spirent Communications’ Hardware Warranty. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the warranty:

- **Repair or replacement**, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time). Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.
- **Telephone support** from technical support engineers during regular local business hours.
- **Escalation of service requests** by our technical support engineers.
- **Access to latest product documentation** to help you effectively utilize your investment.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.

Contact our Customer Service team, or your local distributor, for any support related to this service agreement.

**Americas**
27349 Agoura Road
Calabasas CA, 91301
1-800-SPIRENT (1-800-774-7368)
1-818-676-2616
Support Hours: 8:30AM ET - 6:00PM PT
Email: support@spirent.com

**India**
Spirent Communications (India) Pvt. Ltd
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli
Marath halli – Sarjapur Outer Ring Road
Bangalore - India 560 037
1 800 419 2111 Direct +91 80 67023400
Support Hours: 9:00AM - 6:00PM GMT + 5:30
Email: support@spirent.com

**Europe - Middle East - Africa**
Spirent Communications Business Park Le Val Saint Quentin
2 rue René Caudron, Bât. G - France
+33 1 6137 2270
0800-111-4363 (UK only)
Support Hours: 5:00AM - 6:00PM GMT +1
Email: support@spirent.com

**Asia Pacific**
Room 1302,Shining Tower, No.35
Xueyuan Road, Haidian District
Beijing,100191, China
+400-810-9529 (Mainland)
+86-400-810-9529 (Rest of APAC)
Support Hours: 9:00AM - 6:00PM GMT +8
Email: support@spirent.com

Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at [http://support.spirent.com](http://support.spirent.com) and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.
One year Warranty Agreement

Terms of service response time with Warranty are as follows:
Additional *response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

<table>
<thead>
<tr>
<th>Issue Severity</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical</td>
<td>System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established</td>
<td>8 Hours</td>
</tr>
<tr>
<td>Urgent</td>
<td>System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established. System is providing all functionalities but consistently or randomly generates wrong results. Problem</td>
<td>12 Hours</td>
</tr>
<tr>
<td>Normal</td>
<td>Is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established.</td>
<td>16 Hours</td>
</tr>
</tbody>
</table>

*Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

Additional terms of Warranty Support are as follows:
1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.
4. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States, (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer, and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

Spirent reserves the right to deny service delivery, or charge Customer for repair at Spirent's then-current prevailing rates in accordance with the GSA Schedule Pricelist, should any of the above conditions caused the failure.
One year Warranty Agreement
Entitlement Number:

Appendix A

Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

Support Maintenance
Premium Support with
Advance Replacement Agreement
(SVC-1020)

Attn: 
Name: 
Address: 
City/State/Country: 

Contract Number: 
PO Number: 
Account: 
Start Date: 
Expiration Date: 

Thank you for purchasing Spirent Communications' Premium Support with Advance Replacement. The specific hardware and software listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Advance Replacement of any hardware failure to minimize down-time and inconveniences of obtaining a Purchase Order in the event hardware repairs are required. All repair fees are included under this Agreement in accordance with the GSA Schedule Pricelist. This Agreement does not apply to failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Advance replacements may be new or like new condition. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship advance replacement products, freight prepaid, to Customer.
- Escalation of service requests by our technical support engineers.
- Telephone support from technical support engineers during regular local business hours.
- Software and Firmware updates for the software listed in Appendix A to ensure your system remains current with evolving industry standards (exclude discontinued and obsolete products).
- Access To Computer Based Training Materials to help you get the most from using your Spirent products.
- Access to our software download center on our exclusive online Customer Service Center at http://support.spirent.com to take advantage of Spirent's continual product improvements.
- Automatic email notification of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.
- Access to latest product documentation to help you effectively utilize your investment.

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Account.

<table>
<thead>
<tr>
<th>Americas</th>
<th>Inda</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific - Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>27349 Agoura Road</td>
<td>Spirent Communications (India) Pvt. Ltd</td>
<td>Saint Quentin</td>
<td>Beijing,100191,China</td>
</tr>
<tr>
<td>Calabasas CA, 91301</td>
<td>9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli</td>
<td>2 rue René Caudron, Bât. G - France</td>
<td>+86-400-810-9529 (Mainland)</td>
</tr>
<tr>
<td>1-800-818-676-2616</td>
<td>Marath hall – Sarjapur Outer Ring Road</td>
<td>+33 1 6137 2270 0800-111-4363 (UK only)</td>
<td>+86-400-810-9529 (Rest of APAC)</td>
</tr>
<tr>
<td>Support Hours: 8:30AM ET - 6:00PM PT</td>
<td>Bangalore - India 560 037</td>
<td>Support Hours: 9:00AM - 6:00PM GMT +1</td>
<td>Support Hours: 9:00AM – 6:00PM GMT+8</td>
</tr>
<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>1 800 419 2111 Direct +91 80 67023400</td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>
Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.
Support Maintenance
Premium Support with Advance Replacement Agreement

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at [http://support.spiorent.com](http://support.spiorent.com) and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Terms of service response time with Premium Support are as follows: Additional *response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

<table>
<thead>
<tr>
<th>Issue Severity</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical</td>
<td>System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established</td>
<td>4 Hours</td>
</tr>
<tr>
<td>Urgent</td>
<td>System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established</td>
<td>8 Hours</td>
</tr>
<tr>
<td>Normal</td>
<td>System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established</td>
<td>12 Hours</td>
</tr>
</tbody>
</table>

*Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

<table>
<thead>
<tr>
<th>Americas</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
<td>27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT +5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td>India</td>
<td>Spirent Communications</td>
<td>Beijing, 100191, China +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>
Support Maintenance
Premium Support with
Advance Replacement Agreement

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirentcom and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Additional terms of Premium Support with Advance Replacement are as follows:

1. A customer requiring support in connection with the equipment covered by this agreement should contact Spirent Technical Support. Once Technical Support has determined that the hardware is faulty, a new or refurbished replacement unit will be processed to ship within a forty-eight (48) hour time period. Time of delivery is contingent upon factors such as customer requirements which vary globally.

2. Our customer service representative will also issue an RMA # with instructions for return of the defective product. Customer agrees that the defective product will be returned to Spirent within thirty (30) days from receipt of the advance replacement unit.

3. Should a defective Product not be returned within thirty (30) days of the shipment of the Advance Replacement Product, Spirent will invoice Customer for defects not returned (DNR) prior to 30 days from shipment of the Advance Replacement. Charges for defects not returned will be based on Spirent’s list price of the Advance Replacement Product.

4. All repair charges are covered under this agreement.

5. The standard terms of Spirent’s hardware and software warranty that has been executed by both parties are applicable to this service agreement unless where specifically stated otherwise in this agreement.

6. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.

7. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.

8. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

9. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may
<table>
<thead>
<tr>
<th>Region</th>
<th>Location</th>
<th>Address</th>
<th>Support Hours</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>America</td>
<td>Calabasas, CA</td>
<td>23349 Agura Road</td>
<td>8:30AM - 6:00PM PT</td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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<tr>
<td></td>
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<td>1-800-874-7368</td>
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<td>1-818-676-2616</td>
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<tr>
<td>India</td>
<td>Bangalore, India</td>
<td>560 037 1 800 419 2111</td>
<td>9:00AM - 6:00PM GMT + 5:30</td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td>Europe</td>
<td>Saint Quentin</td>
<td>9th Floor, Uniya Business Bay, Tower 1 Cassna Business Park, Kudubeesanahalli</td>
<td>9:00AM - 6:00PM GMT +1</td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td>Middle East</td>
<td></td>
<td>1 800 419 2111 Direct +91 80 67023400</td>
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<tr>
<td>Africa</td>
<td>Shanghai, China</td>
<td>33-0137-4270 0800-111-4363 (UK only)</td>
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<td>Asia Pacific</td>
<td>Beijing, China</td>
<td>Xueyuan Road, Haidian District</td>
<td>9:00AM - 6:00PM GMT +8</td>
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<td>+86-400-810-9529 (Rest of APAC)</td>
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<tr>
<td></td>
<td>Asia Pacific</td>
<td>Room 1302, Shining Tower, No. 35</td>
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<td></td>
<td></td>
<td>+86-400-810-9529 (Rest of APAC)</td>
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<td></td>
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</tr>
</tbody>
</table>
continue to utilize prior versions.

10. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes optional features or enhancements.

11. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.

12. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

13. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States; (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

14. Repair Return - It is the customers responsibility to pre-pay shipping to Spirent. Additionally, the customer is responsible to ensure the equipment is packed in containers which meet the same specification as when they were shipped from Spirent. When contacting Spirent for such returns, shipping container standards will be provided upon request. Any damage caused in shipping due to improper packing is not covered by Spirent warranty or any service agreement. Damages due to shipping will be immediately brought to the customers attention and a quote for repair provided upon request. Spirent reserves the right to deny service delivery, or charge Customer for repair at Spirent's then-current prevailing rates in accordance with the GSA Schedule Pricelist, should any of the above conditions caused the failure.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.
Support Maintenance
Premium Support with
Advance Replacement Agreement
Contract Number:

Appendix A
Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

**Americas**
27349 Agoura Road
Calabasas CA, 91301
1-800-SPIRENT
(1-800-774-7368)
1-818-676-2616
Support Hours: 8:30AM ET - 6:00PM PT
Email: support@spirent.com

**India**
Spirent Communications (India) Pvt. Ltd
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli
Marathahalli – Sarjapur Outer Ring Road
Bangalore - India 560037
1 800 419 2111 Direct +91 80 67023400
Support Hours: 9:00AM - 6:00PM GMT + 5:30
Email: support@spirent.com

**Europe - Middle East - Africa**
Spirent Communications Business Park Le Val Saint Quentin
2 rue René Caudron, Bât. G - France
+33 1 6137 2270 0800-111-4353 (UK only)
Support Hours: 9:00AM - 6:00PM GMT +1
Email: support@spirent.com

**Asia Pacific**
Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland)
+86-400-810-9529 (Rest of APAC)
Support Hours: 9:00AM – 6:00PM GMT +8
Email: support@spirent.com
SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") is made by and between (i) Spirent Communications, Inc. and its affiliates ("Spirent"), and (ii) the undersigned Ordering Activity under GSA Schedule contracts ("Customer" "You" "User" or "Ordering Activity"), who, intending to be legally bound and for good and valuable consideration hereby acknowledge and agree as follows. If you are accepting the terms of this Agreement on behalf of an entity, you and such entity represent and warrant that you have the authority to bind such entity to this Agreement, and, in such event, "Customer" will refer to such entity.

THIS AGREEMENT GOVERNS CUSTOMER'S USE OF SPIRENT SOFTWARE, INCLUDING EMBEDDED OR PRE-INSTALLED SOFTWARE IN SPIRENT HARDWARE, (THE "SOFTWARE"), UNLESS SPIRENT AND CUSTOMER HAVE EXECUTED A SEPARATE AGREEMENT IN WRITING. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, CUSTOMER IS EXPRESSLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER MAY NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THE SOFTWARE.

1. SOFTWARE LICENSE

1.1. Licensed Rights. Subject to the terms and conditions of this Agreement, Spirent grants to Customer a limited, nonexclusive, nontransferable license, without right of sublicense, to use, solely for Customer's internal business purposes, the Software, in object code form only and only in accordance with (a) the technical specification documentation generally made available by Spirent to its customers with regard to the Software ("Documentation"), (b) this Agreement and (c) any term, user, number of licenses or other restrictions set forth in the applicable Spirent quotation ("Quote") or, if not expressly specified in such Quote, the number of licenses, users and/or test sessions for the part numbers listed in Spirent's price list as of the date of such Quote. Licenses designated as “subscription” licenses are for a twelve (12) month period only (unless otherwise designated in the Quote), and may be renewed for additional successive one (1) year terms by executing a new Purchase Order in writing. Software shall also include any Documentation and any maintenance and support releases, improvements, enhancements, and other updates of the same Software product provided to Customer under this Agreement. The Quote shall specify the license type for each license of the Software:

- **Global Floating**: Customer may install the Software on any number of internal systems and any of Customer's employees, consultants or agents may use the Software on behalf of Customer, provided however, no more than the specified maximum number of simultaneous instances may be executed at any one time.

- **Floating**: Customer may install the Software on any number of internal systems and any of Customer's employees, consultants or agents may use the Software on behalf of Customer, provided however, that (i) no more than the specified maximum number of simultaneous instances may be executed at any one time, and (ii) the Software may not be installed on any system or used by any user outside of the specified jurisdiction(s).

- **Named**: Customer may only permit one registered, unique named individual to use each licensed instance of the Software and may only be installed on a reasonable number of systems utilized by such individuals. Named licenses must be registered with the individual’s actual name and may not be shared by individuals or allocated to a job function. Once a license is associated with an individual, the license may not be transferred to another individual without the express prior written consent of Spirent.

- **Node Locked**: Customer may install each license of the Software on one specific system and that system is the only one which may access that instance of the Software. Once a license is associated with a specific system, the license may not be transferred to another system without Spirent's prior written consent.

Spirent and Customer may agree on alternate types of licenses as set forth in a Quote. If no license type is specified in a Quote, the Software is licensed as a one-year subscription of a single Named license.

1.1.1 Pre-installed Software. To the extent that the Software is pre-installed on Spirent hardware acquired by Customer, Customer may use such Software solely as installed on and to the extent necessary for the normal and intended uses of, such Spirent hardware, subject to the terms of this Agreement.

1.2. Restrictions on Licensed Rights. Customer acknowledges that the components of the Software are subject to copyrights owned by Spirent or its licensors and the Software is licensed, and not sold, to Customer. Customer is prohibited from modifying or permitting anyone else to modify the Software or any module or other portion thereof. Except as necessary to exercise the rights expressly granted in this Agreement, Customer is prohibited from copying or duplicating, or permitting anyone else to copy or duplicate the Software or any module or other portion thereof, other than for purposes of replacing a worn copy or creating an archive copy. Any such copy shall contain the same copyright notice and proprietary markings as the copy of the Software furnished by Spirent to Customer hereunder. In addition to the other restrictions in this Agreement, and other than
as may be required or impermissible by applicable law or third-party licenses, Customer shall not, and shall not permit others to: (i) create derivate works, distribute, transmit, license or otherwise transfer the Software directly or through third parties; (ii) reverse engineer, disassemble, decompile the Software or any component of the Software or otherwise attempt to obtain the source code of the Software; (iii) use the Software in a service bureau environment nor use the Software to process any data other than Customer’s own internal data; or (iv) use the Software for any illegal or malicious purpose or to access any information not owned by Customer or for which it does not have express permission to access; (v) tamper with, or attempt to circumvent or disable, any license key; or (vi) use the Software on any networks, devices or applications not owned or controlled by the Customer. The Software may contain certain devices or mechanisms that Spirent may use to disable or terminate Customer’s access to or use of the Software pursuant to the procedures for bringing a dispute for an alleged breach of this Agreement under the contract Disputes Clause (Contract Disputes Act). Nothing in this Agreement limits or restricts the rights granted to Customer under the license terms applicable to the open source or other third-party software provided hereunder.

1.3. U.S. Government Users. The Software is commercial computer software and commercial computer software documentation within the meaning of the applicable acquisition regulations. If acquired by or on behalf of a civilian agency of the United States government, the Software will be subject to terms of this Agreement as a “license customarily provided to the public” as specified in 48 C.F.R. ch. 1 Part 12.212 of the Federal Acquisition Regulations and its successors. If Spirent receives a request from any Customer agency of the U.S. Government to provide Software with rights beyond those stated above, Spirent will promptly, in its sole discretion, accept or reject such request.

2. INVOICING/PAYMENTS
2.1. License subject to Payment. The license of the Software granted under this Agreement is subject to the payment of Spirent’s then-current GSA Schedule Pricelist list price for the Software or such other amount as set out in the Quote (“Fees”) in accordance with the GSA Schedule Pricelist.
2.2. Payment of Fees. Customer shall pay Spirent the Fees for the Software and any associated software or services net thirty (30) days from the receipt date of Spirent’s invoice for the same. If Customer wishes to expand the scope of its license, additional agreed-upon license fees shall become due and payable to Spirent prior to the effective date of any expansion of the scope of the Customer’s license. Such invoice shall be issued in accordance with the Quote or absent such a Quote upon the delivery or download of the Software whichever is the earlier. Any amounts not paid within such thirty (30) day period shall bear interest governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1316. All Fees will be paid in US dollars.
2.3. Taxes. Spirent shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

3. PROPRIETARY RIGHTS; CONFIDENTIAL INFORMATION
3.1. Ownership of Software. Other than the limited licenses set forth in this Agreement, any and all rights, title and interest in and to the Software, and the intellectual property and proprietary rights to the Software, shall not pass to Customer, but shall remain the exclusive property of Spirent or its licensors.
3.2. Spirent Confidential Information. Customer acknowledges that the following categories of information constitute Spirent Confidential Information: (a) all components of the Software; and (b) reserved; and (c) other information disclosed by Spirent that would reasonably be understood to be confidential or proprietary. Spirent Confidential Information will not include, however, any information which: (a) is or becomes part of the public domain through no act or omission of Customer; (b) was in the Customer’s lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from Spirent or the Software; (c) is lawfully disclosed to Customer by a third party without restriction on disclosure; or (d) is independently developed by the Customer. For a period of ten (10) years from and after disclosure of Spirent Confidential Information to Customer, Customer agrees to hold all such Spirent Confidential Information in strict confidence, and agrees not to disclose (or permit others to disclose) it to others or use it in any way, commercially or otherwise, except in exercising its rights pursuant to this Agreement. Customer shall not disclose any Spirent Confidential Information to a recipient not authorized in writing by Spirent or use the Confidential Information for any purpose not expressly authorized by this Agreement. Any disclosures by Customer of Spirent Confidential Information shall only be to Customer’s employees, consultants, or agents as expressly permitted hereunder on a “need to know” basis for the purposes of this Agreement and subject to such third parties’ acceptance of terms and conditions with respect to the disclosed information at least as restrictive as those set forth in this Agreement. If Customer is compelled by law or a court of competent jurisdiction to disclose Spirent Confidential Information, Customer will promptly notify Spirent in writing and will cooperate at Spirent’s expense in seeking a protective order or other appropriate remedy. If disclosure is ultimately required, Customer will furnish only that portion of Spirent Confidential Information that is legally required and will exercise reasonable efforts to obtain assurance that it will receive confidential treatment. Spirent recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.
3.3. Reserved.

4. TERMINATION
4.1. Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Spirent shall proceed diligently with performance of this Agreement, pending final resolution
of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

4.2. Customer Obligations Upon Termination. Upon termination of this Agreement for any reason, (a) all licenses granted to Customer hereunder shall immediately terminate and Spirent may disable access to the Software, (b) Customer shall discontinue use of the Software and the other Spirent Confidential Information, and any portion thereof, and return the Software and any and all other Spirent Confidential Information in its possession to Spirent, or, at Spirent’s option, destroy the Software and such other Spirent Confidential Information, including all copies or partial copies thereof, and shall certify to Spirent in writing that Customer has retained none of the Spirent Confidential Information, and (c) all outstanding Fees for the Software use prior to the termination date shall become due and payable within thirty (30) days of invoice receipt. The following Sections will survive the expiration or termination of this Agreement: 1.2, 2, 3, 4.2.5, 5.2.2, 6.1.4.

5. LIMITED WARRANTIES AND INDEMNIFICATION; EXCLUSIVE REMEDIES

5.1. Software. For a period of ninety (90) days from the date of delivery of the Software to Customer, or such other period as stated in the Quote accepted in writing by Spirent, Spirent warrants to Customer that the Software, if used in accordance with this Agreement, will operate in material conformity with the specifications for the Software which Spirent may publish. The warranties set forth herein do not apply to any material deviation from the accompanying documentation or specifications which results from (a) modification of the Software by anyone other than Spirent or in accordance with Customer’s instructions, (b) use of the Software for any purpose other than intended, (c) use of Software in combination with any other software or devices, if such claim would have been avoided but for such combination, (d) any misuse or incorrect use of the Software, (e) Customer’s failure to use the latest release of the Software provided by Spirent, or (f) any hardware malfunction. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, SPIRENT CANNOT AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET A SPECIFIC REQUIREMENT OR THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE. During the aforementioned warranty period, Spirent will, at Spirent’s expense and as its entire liability (and Customer’s exclusive remedy) for any breach of the warranty and provided Customer has notified Spirent in writing of the nature of the non-conformity within ten (10) days of Customer’s discovery of the non-conformity and provided Spirent is able to verify such non-conformity: (i) correct the non-conformity or (ii) replace the non-conforming Software with Software meeting Spirent’s then-current published specifications.

5.2. Infringement. Spirent shall have the option, at its own discretion and expense, to (a) obtain for Customer the right to continue using the actual or potential infringing component of the Software or (b) replace the actual or potential infringing component of the Software or modify such component so that it becomes non-infringing, or (c) terminate the licensed rights granted herein and grant Customer a refund of the license fee, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon a three (3) year usable life.

5.2.2. Indemnification. Spirent shall indemnify, defend and hold Customer harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys) arising from any claim, demand, action or proceeding initiated by any third party alleging the Software infringes the copyright, US registered patent or trademark of any third party; provided, however, that as a condition to this indemnification obligation, Customer shall promptly (a) notify Spirent of any threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation may apply, (b) assist Spirent in the defense or settlement of the matter, and (c) provide Spirent control over the defense and settlement of such matter. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

5.2.3. Exclusions. Spirent shall have no obligations under Section 5.2 for any alleged infringement based upon: (a) modification of the Software by anyone other than Spirent, (b) use of the Software in combination with other software or any other Software or devices if such claim would have been avoided but for such combination, (c) Customer’s continued use of the infringing Software after receipt of notice of an infringement claim or after receipt of a remedy from Spirent under this Agreement, (d) Customer’s use of the Software other than in accordance with the terms of this Agreement or Documentation, or (e) modifications to the Software made pursuant to Customer’s express instruction.

THIS SECTION 5.2 STATES SPIRENT’S ENTIRE LIABILITY, AND CUSTOMER’S EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

5.3. Disclaimers. THE LIMITED WARRANTIES AND INTELLECTUAL PROPERTY INDEMNIFICATION SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SOFTWARE FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

5.4. Reserved.

6. LIMITATION OF LIABILITY

6.1. Limitations and Exclusions. IN NO EVENT SHALL SPIRENT OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES OR LIABILITY RELATING TO INTERRUPTION OF SERVICE, COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, LOST PROFITS, OR LOSS OF DATA, INCURRED BY THE CUSTOMER, WITHOUT
REGARD TO CAUSE OR THEORY OF LIABILITY AND REGARDLESS OF WHETHER OR NOT SPIRENT OR ITS SUPPLIERS WERE ADVISED SUCH DAMAGES MIGHT ARISE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

6.2. **Maximum Liability.** THE LIABILITY OF SPIRENT AND ITS SUPPLIERS UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT OR ANY OTHER REASON, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO SPIRENT BY CUSTOMER, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE OR HARDWARE SUCH LIABILITY SHALL BE LIMITED TO THE FEES PAID FOR THE RELEVANT SOFTWARE OR HARDWARE GIVING RISE TO THE LIABILITY.

7. **GOVERNING LAW**

7.1. **Governing Law.** This Agreement and any disputes arising from or related to it, or its subject matters, shall be governed, resolved and remedied in accordance with the Federal laws of the United States. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

7.2. **Reserved.**

7.3. **Compliance with Laws; Export Control Laws.** Customer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with the use of the Software. Customer acknowledges that the Software may be subject to export controls imposed by the U.S. Export Administration Regulations (the “EAR”). Customer will not export or reexport (directly or indirectly) the Software, or any derivatives of the Software without complying with the EAR or other applicable laws with respect to the export of technology from the United States.

8. **GENERAL TERMS**

8.1. **Amendment; Waiver.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Failure of either party to insist upon strict performance of any of the terms and conditions hereunder, or the delay in exercising any of its remedies shall not constitute a waiver of such terms and conditions or a waiver of any default or remedy.

8.2. **Audit.** Customer shall maintain complete and accurate records of its use of the Software during the applicable subscription term (if applicable, or otherwise the term of the Agreement) and for 2 years thereafter. Upon 10 days’ written notice from Spirent, and no more than once per calendar year, Customer shall provide Spirent with reasonable access to Customer’s premises during normal business hours and subject to Government security requirements to conduct an audit of Customer’s records and systems to verify compliance with this Agreement, including calculation of Fees. Spirent shall bear the costs of any such audit.

8.3. **Assignment.** This Agreement and any rights granted hereby may not be assigned by Customer, directly or indirectly, including without limitation by merger, sale of assets or stock, change of control, or operation of law, without the prior written consent of Spirent. Spirent may not assign this Agreement and it rights and obligations hereunder without the prior written consent of the Customer. Any attempt by Customer to assign any rights, duties or obligations without such consent shall be void and without force or effect.

8.4. **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

8.5. **Reserved.**

8.6. **Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

8.7. **Entire Agreement.** This Agreement, together with the Quotes, the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all oral and written prior or contemporaneous agreements related to such subject matter.

8.8. **Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

8.9. **Relationship of the Parties.** Spirent and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

8.10. **Third-Party Components.** Customer acknowledges that the Software contains components made available to Spirent by third party suppliers.

8.11. **Precedence of Documents.** The terms and conditions of this Agreement, insofar as they relate to the rights licensed to the Software will control over any conflicting or inconsistent terms contained in any Quote, or Spirent invoice unless otherwise mutually agreed to in writing. No terms in any quotation, acknowledgment or other form provided by Customer will modify this Agreement, regardless of whether Spirent objects to such terms, and any such additional or conflicting terms are expressly rejected. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. Notwithstanding Section 8.7, the terms and conditions of this Agreement insofar as they relate to matters other than the rights licensed to the Software shall be subject to the terms and conditions of the master purchase agreement between Spirent and Customer (if any) (the “Master Agreement”) only to the extent that such Master Agreement expressly contradicts the terms and conditions of this Agreement.
Support Maintenance
Extended HardwareAgreement (SVC-1900)

Attn:                     Agreement Number: 
Name                      
Address                     
State/City/Country          

Thank you for purchasing Spirent Communications’ Extended Hardware support. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Repair of hardware failure Discontinued Hardware Repair, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time)
- Telephone support from technical support engineers during regular local business hours to help determine HW fault condition.
- Escalation of service requests by our technical support engineers

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirentcom.com and obtain a Customer Service Center user account.

<table>
<thead>
<tr>
<th>Americas</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
<td>27349 Agoura Road, Calabasas CA, 91301</td>
<td>Spirent Communications Business Park Le Val</td>
<td>Room 1302, Shining Tower, No.35</td>
</tr>
<tr>
<td>1-800-SPIRENT (1-800-774-7368)</td>
<td>Saint Quentin 2 rue René Caudron, Bât. G - France</td>
<td>Beijing, 100191, China</td>
</tr>
<tr>
<td>1-818-676-2615</td>
<td>+33 1 6137 2270 0800-111-4363 (UK only)</td>
<td>+86-400-810-9529 (Mainland)</td>
</tr>
<tr>
<td>Support Hours: 8:30AM ET - 6:00PM PT</td>
<td>Support Hours: 9:00AM - 6:00PM GMT +1 Support Hours: 9:00AM - 6:00PM GMT +8</td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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</tbody>
</table>

India
Spirent Communications (India) Pvt. Ltd
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli
Marathahalli - Sarjapur Outer Ring Road
Bangalore - India 560 037
1 800 419 2111    Direct +91 80 57023400
Support Hours: 9:00AM - 6:00PM GMT + 5:30
Email: support@spirent.com
Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.

<table>
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<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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</table>
Support Maintenance Extended Hardware Agreement (SVC-1900)

Additional terms of Extended Hardware Advance Replacement support are as follows:

1. A customer requiring support in connection with the equipment covered by this agreement should contact Spirent Technical Support. Once Technical Support has determined that the hardware is faulty, a new or refurbished replacement unit will be processed to ship within a forty-eight (48) hour time period. Time of delivery is contingent upon factors such as customs requirements which vary globally.

2. Our customer service representative will also issue an RMA # with instructions for return of the defective product. Customer agrees that the defective product will to be returned to Spirent within thirty (30) days from receipt of the advance replacement unit.

3. Should a defective Product not be returned within thirty (30) days of the shipment of the Advance Replacement Product, Spirent will invoice Customer for defects not returned (DNR) prior to 30 days from shipment of the Advance Replacement. Charges for defects not returned will be based on Spirent's list price in accordance with the GSA Schedule Pricelist of the Advance Replacement Product.

4. The standard terms of Spirent's limited hardware warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.

5. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this agreement.

6. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7. This agreement does not cover hardware products which have been designated as “obsolete” as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.

8. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

9. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's
<table>
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<tr>
<th>Region</th>
<th>Address</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td>Americas</td>
<td>27349 Agoura Road, Calabasas, CA, 91301</td>
<td>1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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<td>Spirent Communications (India) Pvt. Ltd 9th Floor, Umia Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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location in the United States; (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

10. Repair Return - It is the customer’s responsibility to pre-pay shipping to Spirent. Additionally, the customer is responsible to ensure the equipment is packed in containers which meet the same specifications as when they were shipped from Spirent. When contacting Spirent for such returns, shipping container standards will be provided upon request. Any damage caused in shipping due to improper packing is not covered by Spirent warranty or any service agreement. Damages due to shipping will be immediately brought to the customer’s attention and a quote for repair provided upon request. Spirent reserves the right to deny service delivery to those customers who fail at Spirent’s then-current prevailing rates, should any of the above conditions caused the failure.

Support Maintenance
Extended Hardware
Agreement (SV/C-1900)

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Support Maintenance
Extended Hardware
Agreement (SVC-1900)

Agreement Number:

Appendix A
Hardware products covered under this Support Services program:

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<th>Product Name</th>
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| Europe - Middle East - Africa |
| Spirent Communications Business Park Le Val Saint Quentin |
| 2 rue René Caudron, Bât G - France |
| +33 1 6137 2270 |
| 0800-111-4363 (UK only) |
| Support Hours: 9:00AM - 6:00PM GMT +1 |
| Email: support@spirent.com |

| Asia Pacific |
| Room 1302,Shining Tower,No.35 Xueyuan Road,Haidian District Beijing,100191,China |
| +400-810-9529 |
| +86-400-810-9529 (Rest of APAC) |
| Support Hours: 9:00AM - 6:00PM GMT +8 |
| Email: support@spirent.com |
Support Maintenance
Software Support Agreement

Contract Number:
(SVC-1010)

Attn:
Name Address:
City/State/Country:

Contract Number:
PO Number:
Account:
Start Date:
Expiration Date:

Thank you for purchasing Spirent Communications' Software Support. The specific software listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Telephone support from technical support engineers during regular local business hours.
- Escalation of service requests by our technical support engineers.
- Software and Firmware updates for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- Access to our software download center on our exclusive online Customer Service Center at http://support.spirentcom.com to take advantage of Spirent's continual product improvements.
- Access to Computer Based Training Materials to help you get the most from using your Spirent products
- Email Notification of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity
- Access to latest product documentation to help you effectively utilize your investment.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific address in your request.

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirentcom.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Signature: ____________________________________________

Name: _______________________________________________

Title: _______________________________________________

Date: _______________________________________________
Support Maintenance
Software Support Agreement
Contract Number:
(SVC-1010)

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Additional terms of Basic Support are as follows:
1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
4. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may continue to utilize prior versions.
5. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes or optional features or enhancements.
6. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.
Support Maintenance
Software Support Agreement
Contract Number:
(SVC-1010)

Appendix A
Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

Spirent Communications
27349 Agoura Road
Calabasas CA, 91301
1-800-774-7368
1-818-676-2616
Support Hours: 8:30AM ET - 6:00PM PT
Email: support@spirent.com
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached SquirrelWERKZ, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Operating Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or
any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SQUIRRELWERKZ, INC.

SQUIRRELWERKZ INC. WARRANTY AND SUPPORT TERMS

1. Definitions.
   “Affiliate” means any entity controlled, controlling, or under common control with a party. For the purposes of this definition, the term “control” will mean the ownership of voting stock of other equity interest entitling the owner to exercise at least fifty percent (50%) of the voting rights of the applicable entity.
   “Agreement” includes these General Terms and all Schedules attached hereto.
   “Authorized Representative” means, the person(s) designated by Ordering Activity in this Agreement, or in another writing provided with ten (10) days prior written notice, as authorized to instruct SquirrelWerkz with respect to all matters and policies related to the performance of Ordering Activity’s obligations under this Agreement.
   “Ordering Activity Account” means the individual account that is established for Ordering Activity for the purpose of its access to the applicable Services.
   “Ordering Activity Confidential Data” means, collectively, any and all information provided by Ordering Activity to SquirrelWerkz in connection with the Services that is considered private, confidential or proprietary and is labeled as such.
   “Ordering Activity Report” means reports generated through the use of the Services or otherwise delivered to Ordering Activity as part of the Services.
   “Service Portal” means the web-based resources made available to Ordering Activity by SquirrelWerkz through which Ordering Activity may access its Ordering Activity Account.
   “Service Provider Data” means collectively all data exclusively owned and stored within the SquirrelWerkz, or authorized partner, data store for use within the context of its services delivery model or separately licensed for use by Ordering Activities.
   “Services” means the services provided by SquirrelWerkz to Ordering Activity for Ordering Activity and its Users under this Agreement, as more particularly set out in the attached Schedules.
   “System” means the computer hardware, network, software, tools and other equipment used by SquirrelWerkz through which the Services are provided.
   “User(s)” means the individual employees of Ordering Activity identified by Ordering Activity as eligible to use the Services.

2. Reserved.

   a. During the term specified in the applicable purchase order, SquirrelWerkz will provide to Ordering Activity and its Users the Services related to the Subscription Level selected by Ordering Activity, as set forth on the first page of this Agreement and as described in Schedule A attached hereto.
   b. The Services, including the Reports, are provided solely at Ordering Activity’s request and instruction and SquirrelWerkz is not acting as an agent or advisor, legal or otherwise, to Ordering Activity.
   c. SquirrelWerkz reserves the right to make modifications, updates and changes to the Services and to change its policies (including, without limitation, terms of use and privacy policies) relating to the System and the Services at any time, effective upon posting of notice of such changes or updated version of the policy on the Service Portal or emailing such changes or updated version of the policy to Ordering Activity’s Authorized Representative.

4. Reserved.

5. Ordering Activity and User Obligations.
   Ordering Activity and its Users may use the Services and all information generated using the Services, including the Reports, only for Ordering Activity’s internal business purposes. Ordering Activity will take all necessary action to ensure that the access, use and security of the Services and all information generated using the Services, including the Reports, is in accordance with the terms of this Agreement, the underlying GSA Schedule Contract, Schedule Pricelist and the applicable purchase order. Ordering Activity may not allow any unauthorized persons or entities to access or use the Services using Ordering Activity Account or any User Account. Ordering Activity will not (i) use, disclose or store data in violation of third party privacy or other rights; (ii) upload or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs to the System; (iii) interfere with or disrupt the integrity or performance of the Services; (iv) attempt to gain unauthorized access to the System; or (v) attempt to gain access to data which is not included the Reports provided to Ordering Activity.

   Ordering Activity will not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services; (ii) make any Reports generated through the Services or delivered to Ordering Activity available to any third party, except as required by applicable law; or (iii) otherwise use or permit the use of the Services or the Reports in violation of this Agreement. Notwithstanding the foregoing, Ordering Activity may use data and conclusions contained in the Reports externally and provide such information to third parties, if and only if such data and conclusions are incorporated into materials created by Ordering Activity and Ordering Activity does not represent such data and conclusions as having originated with SquirrelWerkz.

7. Ordering Activity Account.
   Ordering Activity is responsible for all activity occurring under Ordering Activity Account, including the User Accounts. Ordering Activity will: (i) notify SquirrelWerkz immediately of any unauthorized use of any password or of Ordering Activity Account or any User Accounts or any other known or suspected breach of security; and (ii) report to SquirrelWerkz immediately and use all available efforts to stop immediately any violations of this Agreement using Ordering Activity Account or any of the User Accounts known or suspected by Ordering Activity. Ordering Activity must immediately notify SquirrelWerkz of any change in its Users who have terminated employment or otherwise changed job status or function and are no longer authorized by Ordering Activity to use the Services.

8. Authorized Representative.
   SquirrelWerkz may act in total reliance upon, and will have no liability with respect to, any instruction, instrument or signature reasonably believed by SquirrelWerkz to be from an Authorized Representative. SquirrelWerkz may assume that any Authorized Representative who gives any written notice, request or instruction has the effective authority to do so on behalf of Ordering
Activity. As relating to any User and as between the parties hereto, Ordering Activity will bear sole responsibility with respect to any conduct, error or omission by any of its Authorized Representatives and Users. Ordering Activity will provide SquirrelWerkz at least ten (10) days prior written notice of a change of its Authorized Representatives.

9. **Ordering Activity’s Certifications and Warranties.** Ordering Activity understands that its access to the Services and information generated using the Services is provided in reliance upon the following certifications and warranties of Ordering Activity. Ordering Activity certifies that:
   a. it has the legal power and authority to enter into this Agreement, that the information it has provided is complete, accurate and correct;
   b. it will use the Services, the Reports, and any information therein only as contemplated by the terms of this Agreement; and
   c. it will ensure that its Users will not request a Report or obtain access to Ordering Activity Account, except in the exercise of their duties for Ordering Activity.

10. **Ordering Activity Property.** Ordering Activity will retain ownership of Ordering Activity Confidential Data delivered to SquirrelWerkz for use in the performance of the Services under this Agreement. SquirrelWerkz agrees to deliver to Ordering Activity any Ordering Activity Data, other than archive copies, upon expiration or termination of this Agreement. SquirrelWerkz may retain archival copies of all information relating to the performance of the Services, as required by law, and as necessary to permit it to enforce its rights or defend any claims arising from or relating to this Agreement.

11. **SquirrelWerkz Property.** Title to and ownership of all right, title and interest in and to the Service Provider Data and the System, including, without limitation, any methodologies or analytical techniques used in generating the Reports or other work product made, conceived or developed by SquirrelWerkz alone or with others which in any way result from or relate to the Services pursuant to this Agreement, will at all times remain the sole property of SquirrelWerkz.

12. **Reserved.**

13. **Reserved.**

14. **Reserved.**

15. **SquirrelWerkz Warranties.** SQUIRRELLWERKZ will provide a 60 day express warranty for repair and/or replacement of defective products/services. Ordering Activity understands that the Services may be subject to limitations, delays and other problems inherent in the use of the Internet and electronic communications. SquirrelWerkz is not responsible for delays, delivery failures or otherwise resulting from connection to the Internet (i.e., problems with Ordering Activity’s internet service provider, modem, cable, DSL or dial-up connection or other Ordering Activity Internet connectivity issues) or any other ordering Activity equipment, Ordering Activity’s firewall software, hardware or security settings, Ordering Activity’s configuration of anti-virus software or anti-spyware or malware software, or any other misuse or operator error of Ordering Activity.

16. **Reserved.**

17. **Reserved.**

18. **No Solicitation.** Ordering Activity will not, during the term of this Agreement and for a period of one (1) year thereafter, solicit, seek to hire or engage in employment any person, who while employed by SquirrelWerkz, assists or has assisted in the performance of the Services under this Agreement, provided, however, the foregoing shall not apply to general solicitation through advertisements that are not targeted at such employees of SquirrelWerkz.

19. **Reserved.**

20. **Relationship of Parties.** The parties hereto understand and agree that each party hereto is an independent contractor in the performance of its obligations under this Agreement, and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither party hereto nor its agents or employees are the representatives of the other party for any purpose and neither party hereto has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

21. **No Third Party Beneficiaries.** This Agreement has been entered into for the sole benefit of the parties hereto and their respective successors and permitted assigns. Except as specifically set forth in this Agreement with respect to indemnification, the parties hereto do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein will be construed as creating any right, claim or cause of action in favor of any such third party against any party hereto. Furthermore, this Agreement will not create any contract, legal relationship, interest or right whatsoever between SquirrelWerkz and any individual, beneficiary, User, applicant or assignee under this Agreement.

22. **Reserved.**

23. **Notices.** Except as otherwise provided in this Agreement, notices under this Agreement will be sufficient only if in writing, personally delivered, delivered by a major commercial delivery courier service, postage or charges prepaid, return receipt requested to a party hereto at its addresses set forth on the first page of this Agreement, or as amended by notice pursuant to this Section. Notwithstanding the foregoing, SquirrelWerkz may give notice by means of a general notice on the Service Portal, or by electronic mail to Ordering Activity’s Authorized Representative’s e-mail address on record in the SquirrelWerkz account information. Such notice will be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

24. **Reserved.**

25. **Modification; Waiver.** This Agreement, including referenced schedules and attachments, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) contains the entire understanding between SquirrelWerkz and Ordering Activity with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, dealings and negotiations. Except as otherwise permitted in this Agreement, no modification, alteration, amendment or addition will be effective unless made in writing, dated and signed by the Authorized Representative of Ordering Activity, and an authorized representative of SquirrelWerkz. No waiver of any breach hereof will be held to be a waiver of any other or subsequent breach.

26. **Headings; Interpretation.** The headings provided in this Agreement are for convenience only and will not be used in interpreting or construing this Agreement. The parties desire that this Agreement be construed according to its terms, in plain English, without constructive presumptions against the drafting party.

27. **Severability.** If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the intent of the Parties to the maximum possible extent. Such
determination and renegotiation will not affect or invalidate the remaining provisions of this Agreement, which will remain in full force and effect, except as modifications may be required for consistency with renegotiated terms.

28. Reserved.
29. Reserved.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

STACKROX, INC.

STACKROX, INC. WARRANTY AND SUPPORT TERMS

1. Order Forms; Product License
StackRox, Inc. ("StackRox") and the Ordering Activity ("Customer" or "Ordering Activity") placing an order under a GSA Schedule contract that includes this Agreement (any such order being an "Order Form") mutually agree to be bound to these Terms. Subject to Customer's compliance with the Terms, StackRox grants Customer the right and license to use the software product specified in each Order Form (the "Product") during the applicable Order Form Term (as defined below) for the business purposes of Customer, only in object code form and as provided herein and only in accordance with StackRox's applicable official product documentation (the "Documentation").

2. Implementation; Support
StackRox agrees to use reasonable commercial efforts to provide standard implementation assistance for the Product only if and to the extent such assistance is set forth on such Order Form as authorized, in advance, by StackRox ("Implementation Assistance"). StackRox will provide support for the Product in accordance with the attached StackRox Support Policy.

3. Product Updates
From time to time, StackRox may provide upgrades, patches, enhancements, or fixes for the Product to its customers generally without additional charge ("Updates"), and such Updates will become part of the Product and subject to this Agreement; provided that StackRox shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that StackRox may cease supporting old versions or releases of the Product (which Customer failed to Update) at any time in its sole discretion; provided that StackRox shall use commercially reasonable efforts to give Customer sixty (60) days prior notice of any major changes and will give Customer a reasonable opportunity to implement available Updates to retain support.

4. Ownership; Feedback; Data
As between the parties, StackRox retains all right, title, and interest in and to the Product, and all software, works, and other intellectual property and moral rights related thereto or created, used, or provided by StackRox for the purposes of this Agreement, including any copies and derivative works that are minor modifications of the foregoing. All software which is distributed or otherwise provided to Customer hereunder is licensed and not sold. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Customer may from time to time provide suggestions, comments or other feedback to StackRox with respect to the Product ("Feedback"). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for StackRox notwithstanding anything else. Customer shall, and hereby does, grant to StackRox a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Nothing in this Agreement will impair StackRox’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.

5. Fees; Payment
Payment terms are as set forth in the Order Form between Customer and the prime contractor in accordance with the GSA Schedule Pricelist. All Fees paid are non-refundable by StackRox and are not subject to set-off against any other StackRox payment, except that, if the Ordering Activity is entitled to a refund under the prime contract, such refund shall be paid by the prime contractor and not by StackRox.

6. Restrictions
Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying structure, ideas, or algorithms of the Product (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Product; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Product; (iv) use the Product for the benefit of an unauthorized third party; (v) remove or otherwise alter any proprietary notices or labels from the Product or any portion thereof; (vi) use the Product to build an application or product that is competitive with any StackRox product; (vii) interfere with the proper working of the Product; or (viii) bypass any measures StackRox may use to prevent or restrict access to the Product (or other accounts, computer systems or networks connected to StackRox). Customer is responsible for all of Customer’s activity in connection with the Product, including but not limited to handling Customer's data used with the Product. Customer (i) shall use the Product in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Product (including those related to data privacy,
international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Product in a manner that violates any third party intellectual property, contractual or other proprietary rights.

7. Confidentiality

Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party (a) already knew of or becomes generally available to the public without any action by or involvement of the Receiving Party, (b) was in its possession or known to it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial order or subpoena, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. StackRox recognizes that Federal agencies are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, which requires that GDSVF&H 12668473.2 GSA Approved 17-Jun-19 3

8. Term; Termination

This Agreement shall commence upon the Effective Date set forth in the first Order Form, and, unless earlier terminated in accordance herewith, shall last until the expiration of all Order Form Terms. For each Order Form Term, the “Order Form Term” shall begin as of the Effective Date set forth on such Order Form, and unless earlier terminated as set forth herein, (x) shall continue for the initial term specified on the Order Form (the “Initial Order Form Term”), and (y) following the Initial Order Form Term, may be renewed for additional successive one (1) year terms by executing a new Agreement in writing (each, a “Renewal Order Form Term”) if Customer exercises an option for such successive period or enters into a new Order Form with the prime contractor. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, StackRox shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Notwithstanding the foregoing, any dispute regarding a material breach or regarding whether such breach has been materially and timely cured shall be subject to the Contract Disputes Act. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

9. Indemnification

StackRox (“Indemnitor”) shall defend (subject to 28 USC §516), indemnify, and hold harmless Customer, its affiliates and each of its and its affiliates’ employees, contractors, directors, suppliers and representatives (collectively, the “Indemnitee”) from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys’ fees) ("Losses"), that arise from or relate to any third-party claim that (i) Customer's use of the Product violates any applicable statute, regulation, ordinance or other law (so long as Customer's use is in accordance with the Product's intended use and in compliance with the Product's documentation), (ii) StackRox gross negligence or willful misconduct or, (iii) the Product infringes, violates, or misappropriates any third party intellectual property or proprietary right. Indemnitor's indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (ii) the option to assume control over the defense and settlement of any claim (subject to 28 USC §516 and provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) full cooperation with such defense and settlement (at the Indemnitor’s expense). The foregoing obligations of StackRox do not apply with respect to the Product or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (i) not created or provided by StackRox, (ii) made in whole or in part in accordance to Customer specifications, (iii) modified after delivery by StackRox, (iv) combined with other products, processes or materials not provided by StackRox (where the alleged Losses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer’s use of the Product is not strictly in accordance herewith. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

10. Disclaimer

StackRox warrants that the Software will, for a period of sixty (60) days from the start date of the Term, perform substantially in accordance with Documentation. THE PRODUCT IS ACCEPTED IN ACCORDANCE WITH GSA SCHEDULE TERMS AND CONDITIONS AND EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE PRODUCT IS PROVIDED “AS IS” AND “AS AVAILABLE” AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

11. Limitation of Liability

EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS IN SECTION 9 OR BREACH OF SECTION 6 (RESTRICTIONS) OR 7 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY, NOR STACKROX’S DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF THE CONTRACT PRICE, INCLUDING FEES PAID (OR PAYABLE) BUT NOT PAID TO CUSTOMER TO STACKROX HEREUNDER. FOR PURPOSES OF THIS SECTION 11, LIMITATION OF LIABILITY, “CONTRACT PRICE” MEANS AN ORDER PLACED UNDER THE GSA SCHEDULE PRIME CONTRACT. THE PARTIES AGREE THAT THEIR TOTAL LIABILITY SHALL NOT EXCEED THE LIABILITY OF THE OTHER PARTY, IF THE LIABILITY OF A PARTY IS LIMITED FOR ANY REASON.
12. U.S. Government Rights. The Product and accompanying Documentation are “commercial items” as that term is defined at FAR 2.101. If Licensee is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), StackRox provides the Product and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. In addition, if DFARS 252.227-7015 (Technical Data – Commercial Items) is applicable to the contract, this clause governs technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with StackRox to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use in accordance with Contract Disputes Act of the Product and Documentation and return the Product and Documentation and any other software or technical data delivered as part of the Product and Documentation, unused, to StackRox. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

13. Miscellaneous
This Agreement represents the entire agreement between Customer and StackRox with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and StackRox with respect thereto. Nothing in this Agreement modifies Customer’s agreement with the prime contractor, however, the prime contractor’s terms and conditions are solely between prime contractor and Customer and are not a part of this Agreement between Customer and StackRox. The Agreement shall be governed by and construed in accordance with the Federal laws of the United States. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for each party set forth on the Order Form with a copy to Legal Department, StackRox, Inc., 700 E El Camino Real #200, Mountain View, CA 94040, USA. Either party may update its notice address herein by giving notice in accordance with this section. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by both parties. Excusable delays shall be governed by FAR 52.212-4(f). In addition to the terms at 52.212-4(f), the following are expressly considered excusable delays under this Agreement: earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of war; acts of terrorism; riots; civil or public disturbances; strikes, lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may transfer any or all of its rights or obligations hereunder without the other party’s consent; and (ii) StackRox may utilize contractors/subcontractors in the performance of its obligations hereunder provided that StackRox shall remain liable for the actions and services provided by such subcontractors at all times. Any assignment is subject to the requirements of FAR 42.12 Novation and Change-of-Name Agreement to the extent applicable to this Agreement and/or to GSAR 5212-4(w) if this is included in an Order Form under a GSA prime contract. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party’s rights with respect to such breach or any subsequent breaches.

STACKROX SUPPORT POLICY
During the applicable Order Form Term, StackRox will provide support to Customer for defects with the Product as follows:

<table>
<thead>
<tr>
<th>Channels</th>
<th>Support portal with documentation &amp; case management Support via phone. Support via e-mail</th>
</tr>
</thead>
</table>
| Coverage          | P1 issues: 24x7x365  
                      All other issues: 6am-6pm Pacific Time, excluding holidays                          |
| Target response time | P1 (significant widespread degradation of software): 1 hour  
                      P2 (major, isolated degradation of software): 4 business hours  
                      P3 (all other requests): 1 business day                                      |
| Number of support issues allowed | Unlimited | |
| Emergency fixes   | As needed, based on issue severity | |

Customer may designate up to 4 support contacts ("Designated Support Contacts"), and all support requests must come through the Designated Support Contacts. Customer may update the Designated Support Contacts by providing notice to StackRox. Contact information for support channels are provided when the Product is delivered.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached SunView Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer Order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the particular in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any
because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A – SUNVIEW

USER AGREEMENT AND SOFTWARE LICENSE TERMS

This Agreement applies to an order that incorporates these terms and conditions entered into between the eligible Ordering Activity under GSA Schedule contracts ("you", "your", or "Ordering Activity") and the GSA Multiple Award Schedule Contractor acting by and through its supplier, SunView Software Inc., ("SunView Software") which sets forth all of the terms, conditions, obligations, responsibilities and remedies between you and Contractor with regard to your Use of SunView Software ChangeGear Software.

Section 1 - Definitions:

The following definitions apply throughout this Agreement: "Software" means SunView Software ChangeGear Software, the computer software and all associated printed materials, which may include "online" or electronic documentation; "Use" means storing, loading, installing, executing or displaying the Software; "Computer" means a central processing unit ("CPU") or group of CPU's that accesses its or their own individual non-cache Random Access Memory; "Server" means a Computer that permits Concurrent Use by multiple users; "Client" means a Computer used to access a Server; "Concurrent Use" means access, directly or indirectly, by a licensed user of the Software executing on a Server.

Section 2 - License Grant - Usage in General:

You may Use the Software pursuant to the terms of the particular license(s) you have acquired as specified below. Your license to the Software is perpetual unless you elect to subscribe to the Software for a specified period, in which case the terms specified in the attached Subscription License Addendum will also apply.

SunView Software grants to you, and you accept, the non-exclusive, non-transferable limited right to Use the Software in object code form only, and only on a single Computer.

You may have either a Named User License or a Concurrent User License, subject to the terms below.

(a) Named User License: If you have a "Named User License," the Software may only be used by the individual designated by the administrator as the "Named User" for that copy of the Software. The Named User may Use that particular copy of the Software on any Computer.

(b) Concurrent User License: If you have a "Concurrent User License," you are only authorized to permit the Concurrent Use of the Software installed on a Server by the number of Clients for which you have purchased Concurrent Use Licenses. The Software may contain codes that enforce Concurrent Use restrictions. You may only Use the Software installed on the Server if the Use of the Software on such Server is properly licensed and complies with the conditions and restrictions (including any Concurrent Use restrictions) of such Server license.

Section 3 - License Rights and Restrictions:

(a) Ownership: You acknowledge and agree that the Software is owned and copyrighted by SunView Software or its third party suppliers and/or licensors. Your license confers no title or ownership in the Software and is not a sale of any rights in the Software. All ownership rights remain in SunView Software or its third party suppliers and/or licensors, as the case may be. SunView Software and ChangeGear are trademarks or service marks or registered trademarks of SunView
Software in the United States of America and/or in other countries. All other marks in the Software are the marks of their respective owners.

(b) Copies: You may only make one (1) copy of the object code of the Software, which you may Use, subject to the terms of this Agreement, solely for (i) backup or archival purposes and (ii) development and testing purposes, or when copying is an essential step in the authorized Use of the Software. You must reproduce all copyright and other proprietary or restricted rights notices in the original Software on the authorized copy. You may not copy any of the books or printed materials provided in connection with the Software.

(c) Additional Restrictions: The Software contains SunView Software trade secrets, which you must not disclose. You must also not decompile, reverse engineer, disassemble, copy, modify, translate, or adapt the Software, or create derivative works based on the Software, or otherwise reduce the Software to human-perceivable form except to the extent that such rights cannot be excluded by mandatory applicable law. You must not disable any licensing, anti-piracy or other control features of the Software. Except to the extent expressly permitted herein, you must not: permit other individuals to Use the Software; rent, resell for profit, distribute, sublicense, lease, grant a security interest in, or otherwise transfer or assign any rights to the Software; or remove any proprietary notices or labels on the Software. You must not use the Software to create competitive products or applications or to create software or products using similar features, functions or graphics of the Software. You must not disclose to third parties any benchmark tests or other evaluations of the Software. You have no rights to the Software except as explicitly granted to you by SunView Software in this Agreement.

(d) Upgrades: If the Software you purchased is an upgrade of a SunView Software product, you may Use that upgraded product only in accordance with this Agreement. If the Software is an upgrade of a component of a package of software programs that you licensed as a single product, the Software may be Used and transferred only as part of that single product package and may not be separated for Use on more than one Computer. You must not loan, rent, lease, or otherwise transfer the original non-upgraded product to another user.

(e) Content: Any non-SunView Software materials (Third-Party Content") you access via the Software (on-line or otherwise) is the property of the applicable owner and may be protected by applicable copyright law. This Agreement grants you no rights to Third-Party Content.

Section 4 - Reserved.

Section 5 - Remedies:

(a) Limited Returns; Defective Software:

If you identify that the Software is defective, you may (i) obtain a refund of the purchase or subscription price of the Software or the Software upgrade (as applicable), or (ii) request replacement Software provided that, you return to SunView Software the Software and any copies thereof, any accompanying documentation and dated proof of purchase within sixty (60) days from the date of your purchase of the Software.

THIS SECTION 5(a) SETS FORTH SUNVIEW SOFTWARE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDIES IN RELATION TO SOFTWARE DEFECTS OR YOUR DISSATISFACTION WITH THE SOFTWARE.

(b) Limited Warranty and Disclaimers:

(i) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, SUNVIEW SOFTWARE, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, RELATED DOCUMENTATION AND OTHER MATERIALS AND SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, SUNVIEW SOFTWARE DOES NOT WARRANT THAT THE SOFTWARE SHALL PERFORM WITHOUT INTERRUPTION OR BE ERROR FREE, OR THAT IT IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS. YOU ACKNOWLEDGE THAT THE SOFTWARE IS PROVIDED "AS IS" AND YOU ACCEPT THE ENTIRE RISK AS TO THE SOFTWARE'S QUALITY AND PERFORMANCE.
(ii) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SUNVIEW SOFTWARE AND ITS LICENSORS, THEIR RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS IN CONNECTION WITH THE SOFTWARE OR ANY SERVICE RELATED THERETO.

(iii) SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, TO THE EXTENT YOUR JURISDICTION PERMITS SUCH LIMITATIONS, ANY IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE YOU PURCHASED OR SUBSCRIBED TO THE SOFTWARE OR TO THE SHORTEST PERIOD PERMITTED BY APPLICABLE LAW, IF LONGER. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS AS WELL, WHICH MAY VARY ACCORDING TO JURISDICTION.

(c) Reserved.

(d) Reserved.

Section 6 - Export Controls:

None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the United States of America has embargoed goods; and/or (ii) to anyone on the United States of America's Treasury Department's list of Specially Designated Nationals or the United States of America's Commerce Department's Table of Denial Orders and/or (iii) otherwise in breach of United States laws and regulations related to exports and to all administrative acts of the US Government pursuant to such laws and regulations. By downloading, installing and/or Using the Software, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any country or on a list in breach of this Section 6. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or Use the Software, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

Section 7 - U.S. Government End Users:

The Software is a "commercial item," as that term is defined in 48 C.F.R. 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and the Department of Defense Federal Acquisition Regulations Sections 252.227-7014(a)(1), (5). Consistent with 48 C.F.R. 12.212, all U.S. Government End Users acquire the Software with only those rights set forth herein. The manufacturer is SunView Software Inc., 10210 Highland Manor Drive Suite 275, Tampa, FL 33610.

Section 8 - Reserved.

Section 9 - Technical Support:

SunView Software shall provide Software support and maintenance to you in accordance with Exhibit A attached hereto, subject to the terms below. If you are granted a perpetual license to the Software, following the initial one (1) year period of Software support and maintenance, such support and maintenance may be renewed for subsequent one (1) year periods by executing a new purchase order for the subsequent period. If you are granted a subscription license to the Software, support and maintenance is included in the license fee as described in the Subscription License Addendum hereto.

Section 10 - Reserved.

Section 11 - Reserved.

Exhibit A: Support and Maintenance
SunView Software shall provide the Software support and maintenance described in this Exhibit A in order to ensure that the Software remains in good working order and operates in accordance with its documentation and specifications.

SunView Software shall advise you on the use of the Software and shall assist you in identifying and solving any problems encountered in such use and reported by you by rendering the following support and maintenance:

(i) Corrective maintenance. Corrective maintenance includes diagnosis and correction by SunView Software of actual errors or defects in the program codes of the Software and in the documentation. An error or defect is the failure of the Software to operate materially in accordance with the documentation and its specifications.

(ii) Perfective maintenance. Perfective maintenance includes the modification of the Software in order to improve and extend its functionality.

(iii) Releases. All permanent solutions developed for problems encountered in the Use of the Software, all corrections of errors and defects in the Software and all enhancements, improvements and modifications of the Software referred to hereinabove shall be incorporated by SunView Software as soon as reasonably possible in a release, a copy of which shall be provided to you as soon as it is ready for release together with the updated documentation.

A release of any particular item of the Software shall be based on the previously offered version and shall have equivalent or enhanced functionality with such corrections and amendments as SunView Software reasonably decides to include.

You are free to adopt a new release or to continue to Use the current release.

**Subscription License Addendum**

When the Software is licensed hereunder for a particular subscription period ("Subscription Licensed Software"), the following terms apply and prevail over any conflicting terms in this Agreement:

1. The Software is licensed for the agreed term indicated in the applicable purchase order.

2. Maintenance for Subscription Licensed Software commences as of delivery and is included in the annual Subscription Period license fee. Maintenance ceases if the Subscription Period expires and is not renewed.

3. Reserved.

4. Reserved.

5. If you do not renew your license for Subscription Licensed Software, within five (5) business days following the end of the Subscription Period, you must present a certification signed by you or a corporate officer of your enterprise stating that the Software has been uninstalled from all devices, you have retained no copies, and you acknowledge that you have no right to continue using the Software. You acknowledge that following the expiration of the Subscription Period, any data that is retained in formats only readable by the Software will not be accessible.
EC America Rider to Product Specific License Terms and Conditions

All references to Syferlock in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, Syferlock.”

TERMS AND CONDITIONS FOR SYFERLOCK PRODUCTS AND SERVICES

1. Definitions

Defined terms are capitalized and have the meanings indicated in Definitions section below

2. Right to Use Software

SyferLock hereby grants to Customer a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein and in the applicable Attachment(s). SyferLock hereby grants to Customer a nonexclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, SyferLock’s trademarks and trade names set forth on Attachment H hereof (“SyferLock Marks”) solely for the purpose of using the Software in accordance with this Agreement. Customer shall comply with SyferLock’s trademark guidelines as provided from time to time by SyferLock. Customer agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the SyferLock Marks, of its own trademark as approved in writing by SyferLock. To the extent that SyferLock will authorize any use of a composite trademark comprised out of SyferLock Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with this Agreement and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Customer’s trademarks with the SyferLock Marks must maintain the distinctness of each trademark. Subject to the foregoing, the SyferLock Marks are the only trademarks and trade names that Customer is authorized by SyferLock to employ in connection with the Software and Customer agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Customer’s use of the SyferLock Marks shall inure to the benefit of SyferLock. The license set forth in this Section 2 is not sublicensable.

3. Restrictions on Use of Software

Customer’s use of the Software is subject to the following restrictions. Except as expressly permitted in this Agreement, Customer shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing SyferLock’s copyright notices and other SyferLock Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Customer’s right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warranty notice or other SyferLock Marks included on or embedded in any part of the Software, (e) install, reconfigure or reinstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by SyferLock (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved, or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Customer are reserved by SyferLock. There are no implied rights. Customer shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the Cover page.

4. Third Parties

Customer’s use and disclosure of the Software is restricted solely to its employees, professional advisors who acknowledge the confidential nature of the Software and agents and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth in this Agreement. Customer agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Customer herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by SyferLock, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Customer shall not use the Software in any manner other than as expressly provided for in this Agreement.

5. Reserved.

a) Reserved.

b) Reserved.

c) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

d) Customer shall not, in advertising or otherwise, use or display any of SyferLock Marks or any name, mark, or logo that is the same as or similar to SyferLock Marks, represent itself to be a licensee of SyferLock, or in any way identify itself with SyferLock or contains any portion of a SyferLock Mark.

e) Reserved.

f) Sections 5, 6, 7(a), 7(b), 7(e), 8, 10-14, and 15 hereof, will survive termination or expiration of this Agreement.

g) Reserved.

6. Effect of Termination or Expiration

a) Reserved.

b) Reserved.

c) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

d) Customer shall not, in advertising or otherwise, use or display any of SyferLock Marks or any name, mark, or logo that is the same as or similar to SyferLock Marks, represent itself to be a licensee of SyferLock, or in any way identify itself with SyferLock or contains any portion of a SyferLock Mark.

e) Reserved.

7. Inspection/Acceptance

The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s (“SYFERLOCK”) published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights- (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
8. Proprietary Rights
As between SyferLock and Customer, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Customer in connection with this Agreement. Customer acknowledges that, as between SyferLock and Customer, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Customer shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of SyferLock granting Customer the rights set forth in this Agreement, Customer agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications, enhancements, improvements, inventions, works of authorship or any suggestion Customer or any of Customer personnel or third party proposes, creates, authors or develops relating to the Software, Documentation, SyferLock Marks or any other deliverable made available by SyferLock in connection with this Agreement or any portion of any of the foregoing (collectively, the “Suggestions”) are hereby assigned to SyferLock, shall be the sole and exclusive property of SyferLock and shall be considered SyferLock Confidential Information for all purposes hereof. At SyferLock’s expense, Customer agrees to take any action (and to cause its personnel to take any action) SyferLock requests to perfect SyferLock’s ownership in the Software and/or any Suggestion.

9. Software Maintenance and Support Services; Other Services
Customer may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. SyferLock shall provide the Standard Maintenance and Support Services described on Attachment E during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth on the Cover Page. If selected by Customer on the Cover Page, all such services will be provided by SyferLock in accordance with the terms set forth hereunder and applicable Statement(s) of Work. Customer will be entitled to receive Updates only if Customer is a paid-up Maintenance and Support Services customer at the time an Update is commercially released. Customer shall have the option to purchase Upgrades in accordance with SyferLock’s pricing structure in effect at the time an Upgrade is commercially released.

10. SyferLock’s Duty of Indemnification
To the extent permitted by federal law, SyferLock, at its expense, shall defend any action, suit or proceeding brought against Customer which alleges that any Software infringes any United States copyright and SyferLock shall pay damages finally awarded against Customer (including attorneys’ reasonable fees), provided that (a) Customer notifies SyferLock promptly in writing of the claim, (b) SyferLock has sole control of the defense and all related settlement negotiations, and (c) Customer provides SyferLock with all requested assistance, information and authority to perform the above at SyferLock’s expense. In the event that Customer’s use of the Software is enjoined by a court of competent authority, SyferLock shall, at its sole option and at its expense, either: (i) procure for Customer the right to use the Software or (ii) modify the Software to avoid infringement without material impairment of its functionality or (iii) if neither of the foregoing remedies can be obtained upon terms commercially reasonable in the judgment of SyferLock, require Customer to remove and return to SyferLock the Software involved and, if Perpetual Term is selected on the Cover Page, refund to Customer a portion of the price thereof as depreciated over a three (3) year life of the Software commencing on the date of delivery. The foregoing indemnity shall not apply if the alleged infringement is attributable to (i) any adjustment, enhancement, revision, development or addition to the Software based on Customer provided guidelines, requests and/or specifications, (ii) the combination of the Software and products and/or other materials not provided by SyferLock under this Agreement, (iii) if the Software is modified or altered by any person or entity other than SyferLock, (iv) if the Software is used in any way other than as set forth in the Documentation, or (v) if the Software is otherwise used outside the scope of this Agreement. THIS SECTION STATES SYFERLOCK’S SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

11. Reserved

12. Limited Warranty
a) SyferLock warrants that for a period of thirty (30) days following initial delivery of the Software to Customer (“Warranty Period”), SyferLock will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that SyferLock receives a written claim from Customer under this limited warranty within the Warranty Period. This Warranty does not apply if Customer or any third party changes or modifies the Software without the authorization of SyferLock. SyferLock does not warrant that the Software will be error free or that all errors can be remedied.

b) The EXPRESS WARRANTIES GRANTED UNDER THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY SYFERLOCK WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HEREUNDER OR ANY DELIVERABLE MADE AVAILABLE HEREUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. SYFERLOCK HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, SYFERLOCK’S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS REQUIRED BY THE LOCAL LAW OF CUSTOMER. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, SYFERLOCK SPECIFICALLY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. SYFERLOCK EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF CUSTOMER OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF SYFERLOCK’S OR ANY THIRD PARTY’S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

13. Limitation of Liability
CUSTOMER’S SOLE REMEDY AND SYFERLOCK’S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES CUSTOMER’S REMEDY SHALL BE LIMITED TO THE LESSER OF (A) THE ACTUAL MONEY DAMAGES, OR (B) AN AMOUNT NOT EXCEEDING THE SOFTWARE LICENSE FEES PAID TO SYFERLOCK BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. WITHOUT
LIMITING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL SYFERLOCK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF SYFERLOCK, INCLUDING ITS EMPLOYEES, AGENTS, PARTNERS, REPRESENTATIVES, OR SUBCONTRACTORS, BE LIABLE FOR ANY (A) DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, (B) INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, INCIDENTAL, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF SYFERLOCK COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF SYFERLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY OTHER THAN THOSE DETERMINED TO BE INDEMNIFIABLE CLAIMS UNDER SECTION 10 BY AN UNAPPEALABLE COURT RULING AND ONLY TO THE EXTENT PROVIDED FOR ABOVE, OR (D) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-SYFERLOCK PRODUCT, SERVICES OR DELIVERABLES. CUSTOMER RECOGNIZES THAT THE FEES HEREUNDER ARE BASED IN PART ON THE LIMITED WARRANTY AND LIMITATION OF LIABILITY AND REMEDIES SET FORTH HEREIN.

14. Confidentiality
Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to Confidential Information. Each party agrees to maintain in confidence and use only as expressly permitted in this Agreement all Confidential Information received from the other, both orally and in writing, provided that the parties’ obligations of nondisclosure under this Agreement shall not apply to Confidential Information which the receiving party can demonstrate: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) was rightfully in the receiving party’s possession prior to disclosure by the disclosing party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a third party in lawful possession of such Confidential Information; or (iv) is independently developed by the receiving party without reference to Confidential Information. In the event a subpoena or other legal process is served upon a party receiving Confidential Information of the other party hereunder that, pursuant to the requirement of a governmental agency or law of the United States or any state thereof (or any governmental or political subdivision thereof), requires the disclosure of such Confidential Information, the receiving party will notify the disclosing party promptly upon receipt of such subpoena or other request for legal process, and will cooperate with the disclosing party, at the disclosing party’s expense, in any lawful effort by the disclosing party to contest the legal validity or scope of such subpoena or other legal process.

15. Miscellaneous
a) Assignment
Customer may not sublicense, assign (by operation of law or otherwise) or otherwise transfer this Agreement or any license or any right, duty or obligation under this Agreement without SyferLock’s prior written consent, and any attempt to do so shall be null and void. Subject to the foregoing limitations, this Agreement will mutually benefit and be binding upon the parties, their successors and assigns.

b) Export Control
Customer acknowledges that the export of any Software is or may be subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

c) U.S. Government Restricted Rights
Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

d) License subject to Licensor’s Rights
Customer acknowledges that portions of the Software may have been licensed to SyferLock by one or more third parties. All rights and obligations provided by SyferLock to Customer under this Agreement shall be limited to the extent that such underlying rights and obligations have been provided to SyferLock. e) Reserved

f) Reserved

g) Waiver
A failure or delay by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement. Any waiver by either party of any right under this Agreement shall not constitute a waiver of such right in the future. All rights and remedies evidenced hereby are in addition to and cumulative to rights and remedies available at law or equity or otherwise available under any other contract.

h) Severability
If any provision or portion of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly affects the parties’ intent in entering this Agreement. i) Force Majeure
Excluding the payment of money, neither party will be deemed in default of any obligation hereunder nor be liable for any failure or delay in performance which results directly or indirectly from any cause beyond its reasonable control, including without limitation, “Acts of God,” delays or failures in the Internet or related carriers and third-party equipment, acts of civil or military authority, strikes, fire, theft, delays by suppliers, or action or inaction by the other party or any third party.

j) Reserved

k) Reserved

l) Compliance with Law
Customer is solely responsible for ensuring that its use of the Software is in compliance with all foreign, federal, state, and local laws and regulations, and Customer represents and warrants to SyferLock that it will comply with this subsection.

m) Counterparts
This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

n) Reserved

o) Reserved

p) No Third Party Beneficiaries
“Agreement” means this License Agreement, together with agreed upon terms in the ordering documents.

“Confidential Information” means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled “confidential” or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled “confidential” or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral: the Documentation, the Software, the terms of this Agreement, information relating to the Company’s products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, customer data, trade secrets, techniques, know-how, formula, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

“Cover Page” means the quote.

“CPU” means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Customer will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed on the quote as a single CPU.

“Documentation” means end user materials, including manuals and training materials, in any form or medium, provided by SyferLock for use with the Software.

“Effective Date” means the effective date indicated on the Cover Page.

“Maintenance and Support Services” means the services provided to Customer by SyferLock in accordance with the terms set forth herein.

“Response (Time)” means contact to Customer via phone or an electronic means.

“Resolution (Time)” means a corrective measure(s) to address an Error.

“Server” or “Enterprise Server” means a central a computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

“Service Bureau” means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

“Severity Level” means a reported anomaly or error isolated to software, and as defined herein.

“Severity Level 1 (SL1)” means an error isolated to software that renders product inoperable or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

“Severity Level 2 (SL2)” means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

“Severity Level 3 (SL3)” means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

“Severity Level 4 (SL4)” means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

“Severity Level 5 (SL5)” means an enhancement request.

“Software” means one or more of the commercially available software products, available from SyferLock, as specified on the Cover Page.

“Update” or “Upgrade” means an improved and enhanced version of the Software released by SyferLock subsequent to the version licensed by Customer hereunder that SyferLock may make available to licensees of the Software for an additional fee.

“Version” means any update, version, release, revision, patch, bug fix or modified form of the Software that SyferLock, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

“Warranty Period” has the meaning set forth in Section 12(a).

STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES

E-1) Maintenance and Support Services

SyferLock will provide Customer with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Customer as specified on the Cover Page; SyferLock is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. SyferLock shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Customer’s neglect or misuse of the Software, (b) modification of the Software by a person or entity other than SyferLock without the prior written consent of SyferLock, or (c) any other cause beyond the reasonable control of SyferLock. SyferLock shall not be obligated to respond to requests for support from any person or entity other than a representative of Customer’s IT department that have been pre-approved in writing by SyferLock. SyferLock shall have no liability to any third party with respect to the Maintenance and Support Services.

E-2) Versions

Upon commercial release of a new Version, SyferLock shall provide such Version to paid Maintenance and Support Services Customers.

E-3) Error Correction

Customer may call to report an “Error” in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide SyferLock all information necessary for diagnosis of the Error. SyferLock will use commercially reasonable efforts to contact Customer with respect to such reported Error within one (1) business day following the business day upon which it was submitted. SyferLock shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Customer possible custom professional services to resolve Customer’s request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

E-4) Reserved

E-5) Reserved

E-6) SyferLock Personnel
In the performance of the Maintenance and Support Services, SyferLock reserves the right to determine the assignment of SyferLock personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of SyferLock hereunder shall be restricted or prevented from performing services for others that are similar to the services provided under this Agreement.

E-7) On-Site Visits

For purposes of performing the Maintenance and Support Services, Customer shall permit authorized SyferLock service engineers to inspect periodically during normal business hours Customer's computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Customer). If SyferLock is unable by remote telephone or on-line support to address an Error, then SyferLock, at its sole discretion, may dispatch a software engineer to Customer's site to address the Error. The travel and other reasonably incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Customer. Dispatch shall be within two (2) business days after SyferLock has determined at its sole discretion that telephone or on-line assistance is not sufficient. If Customer requests an on-site software support visit and SyferLock reasonably determines that the reported problem is not the responsibility of SyferLock, Customer shall work with SyferLock to determine the costs reasonably incurred by the SyferLock personnel in making such visit.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Support Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support Provided</td>
<td>Second Tier*, On-Line and Phone Support during Support Hours</td>
</tr>
<tr>
<td>Support Hours</td>
<td>Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. SyferLock will reply to Customer’s call or email/on-line Error report within the time frames set forth in Section E-3 above.</td>
</tr>
<tr>
<td>Staff</td>
<td>Access to technical support staff</td>
</tr>
<tr>
<td>Diagnostics &amp; Resolution</td>
<td>Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics &amp; Resolution shall be conducted via remote assistance where possible.</td>
</tr>
</tbody>
</table>

* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Customer IT staff identified pre-approved for such purpose in writing by SyferLock. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Customer personnel trained for such purpose and that no First Tier Support shall be rendered by SyferLock.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
SYFERLOCK TECHNOLOGY CORPORATION

SYFERLOCK TECHNOLOGY CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions
Defined terms are capitalized and have the meanings indicated in the Definitions section hereunder.

2. Right to Use Software
Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein. Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, Contractor’s trademarks and trade names set forth (“Contractor Marks”) solely for the purpose of using the Software in accordance with these terms. Ordering Activity agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the Contractor Marks, of its own trademark as approved in writing by Contractor. To the extent that Contractor will authorize any use of a composite trademark comprised out of Contractor Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with these terms and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Ordering Activity’s trademarks with the Contractor Marks must maintain the distinctness of each trademark. Subject to the foregoing, the Contractor Marks are the only trademarks and trade names that Ordering Activity is authorized by Contractor to employ in connection with the Software and Ordering Activity agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Ordering Activity’s use of the Contractor Marks shall inure to the benefit of Contractor. The license set forth in this Section 2 is not sub-licensable.

3. Restrictions on Use of Software
Ordering Activity’s use of the Software is subject to the following restrictions. Except as expressly permitted in these terms, Ordering Activity shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing Contractor’s copyright notices and other Contractor Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Ordering Activity’s right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other Contractor Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by Contractor (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Ordering Activity are reserved by Contractor. There are no implied rights. Ordering Activity shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the quote.

4. Third Parties
Ordering Activity’s use and disclosure of the Software is restricted solely to its employees, agents, consultants and/or independent contractors (collectively referred to as “employees,” hereinafter) who acknowledge the confidential nature of the Software and agents, consultants and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth herein. Ordering Activity agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Ordering Activity herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by Contractor, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Ordering Activity shall not use the Software in any manner other than as expressly provided for herein these terms.

5. Terms of Agreement Termination
The Order shall commence upon the Effective Date and, unless terminated in accordance with the FAR, the underlying GSA Schedule Contract, and/or any applicable GSA Customer Purchase Orders. shall remain in effect for the term specified on the Order (either perpetual or yearly subscription, each as defined below).

6. Effect of Termination or Expiration
   a) Yearly Subscription Term. If yearly subscription term is ordered, this License shall have an initial term of 12 (twelve) months.
   b) Perpetual Term. If perpetual term is ordered, the term of this License shall be perpetual with respect to the version of the Software licensed hereunder.

7. Proprietary Rights
   a) Each party shall immediately surrender all rights, licenses, and privileges granted under this Attachment A.
   b) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

8. Reserved
As between SyferLock and Ordering Activity, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Ordering Activity in connection with these terms. Ordering Activity acknowledges that, as between SyferLock and Ordering Activity, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Ordering Activity shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of Contractor through SyferLock granting Ordering Activity the rights set forth herein, Ordering Activity agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications and enhancements.

9. Software Maintenance and Support Services; Other Services
Ordering Activity may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. Contractor through SyferLock shall provide the Standard Maintenance and Support Services described herein below during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth in the GSA Customer Purchase Order. If selected by Ordering Activity, all such services will be provided by Contractor in accordance with the terms herein below (Software Maintenance and Support Services), and applicable Statement(s) of Work. Ordering Activity will be entitled to receive Updates only if Ordering Activity is a paid-up Maintenance and Support Services Ordering Activity at the time an Update is commercially released. Ordering Activity shall have the option to purchase Upgrades pursuant to the execution of a new GSA Customer Purchase Order.

10. Reserved

11. Reserved

12. Limited Warranty
   a) Contractor warrants that for a period of thirty (30) days following initial delivery of the Software to Ordering Activity (“Warranty Period”), Contractor will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that Contractor receives a written claim from Ordering Activity under this limited warranty within the Warranty Period. This Warranty does not apply if Ordering Activity or any third party changes or modifies the Software without the authorization of Contractor. Contractor does not warrant that the Software will be error free or that all errors can be remedied. Contractor warrants that the services provided by Contractor in connection with these terms will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be Contractor’s entire liability and Ordering Activity’s remedy under this warranty.
   b) THE EXPRESS WARRANTIES GRANTED HERUNDER ARE THE ONLY WARRANTIES MADE BY CONTRACTOR WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HERELUNDER OR ANY DELIVERABLE MADE AVAILABLE HERELUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, CONTRACTOR’S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THESE TERMS, EXCEPT AS REQUIRED BY FEDERAL LAW. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, CONTRACTOR SPECIFICALLY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF ORDERING ACTIVITY OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF CONTRACTOR’S OR ANY THIRD PARTY’S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE TERMS.

13. Reserved

14. Reserved

15. Miscellaneous
   a) Reserved
   b) Export Control
Ordering Activity acknowledges that the export of any Software is or may be subject to export or import control and Ordering Activity agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Ordering Activity obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

16. U.S. Government Restricted Rights
Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at 48 CFR 52.227-19, as applicable.

17. License subject to Licensor’s Rights
Ordering Activity acknowledges that portions of the Software may have been licensed to Contractor by one or more third parties. All rights and obligations provided by Contractor to Ordering Activity hereunder shall be limited to the extent that such underlying rights and obligations have been provided to Contractor.

18. Reserved

19. Reserved
DEFINITIONS

“Agreement” means this License Agreement.

“Confidential Information” means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled as “confidential” or, if disclosed orally within thirty (30) days in a writing labeled “confidential” or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information regardless of compliance with the foregoing marking requirements, regardless of format, written or oral): the Documentation, the Software, information relating to the Company's products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, Ordering Activity data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

“Cover Page” means the first two pages of this Agreement.

“Severity Level 5 (SL5)” means an enhancement request.

“Software” means one or more of the commercially available software products, available from Contractor, as specified on the Cover Page.

“Severity Level 3 (SL3)” means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

“Severity Level 1 (SL1)” means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

“Resolution (Time)” means a corrective measure(s) to address an Error.

“Responsibility (Time)” means contact to Ordering Activity via phone or an electronic means.

“Server” or “Enterprise Server” means a central computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

“Service Bureau” means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

“Severity Level 4 (SL4)” means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

“Severity Level 5 (SL5)” means an enhancement request.

“Software” means one or more of the commercially available software products, available from Contractor, as specified on the Cover Page.

“Update” or “Upgrade” means an improved and enhanced version of the Software released by Contractor subsequent to the version licensed by Ordering Activity hereunder that Contractor may make available to licensees of the Software for an additional fee.

“Version” means any update, version, release, revision, patch, bug fix or modified form of the Software that Contractor, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

“Warranty Period” has the meaning set forth in Section 12(a).

STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES

E-1) Maintenance and Support Services

Contractor through SyferLock will provide Ordering Activity with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Ordering Activity as specified on the Cover Page; Contractor is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. Contractor shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Ordering Activity’s neglect or misuse of the Software, (b) modification of the Software by a person or entity other than Contractor without the prior written consent of Contractor, or (c) any other cause beyond the reasonable control of Contractor. Contractor shall not be obligated to request from support any person or entity other than a representative of Ordering Activity’s IT department that have been pre-approved in writing by Contractor. Contractor shall have no liability to any third party with respect to the Maintenance and Support Services.

E-2) Versions

Upon commercial release of a new Version, Contractor through SyferLock will provide such Version to paid-up Maintenance and Support Services Ordering Activities.

E-3) Error Correction

Ordering Activity may call to report an “Error” in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide Contractor through SyferLock all information necessary for diagnosis of the Error. Contractor will use commercially reasonable efforts to contact Ordering Activity with respect to such reported Error within one (1) business day following the business day upon which it was submitted. Contractor shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Ordering Activity possible custom professional services to resolve Ordering Activity’s request. The foregoing support services during the hours specified in the table below are unlimited in any given month.
E-4) Term
The initial term of Maintenance and Support Services shall be one year (the “Term”) commencing on the expiration of the Warranty Period if Ordering Activity has elected a perpetual term on the Cover Page, and commencing on the Effective Date if Ordering Activity has elected a Yearly Subscription term on the Cover Page. In the event that Ordering Activity elects to reinstate Maintenance and Support Services following termination of such services by Ordering Activity, execution of a new GSA Customer Purchase Order will be required.

E-6) Contractor Personnel
In the performance of the Maintenance and Support Services, Contractor through SyferLock reserves the right to determine the assignment of Contractor personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of Contractor hereunder shall be restricted or prevented from performing services for others that are similar to the services provided hereunder.

E-7) On-Site Visits
For purposes of performing the Maintenance and Support Services, Ordering Activity shall permit authorized Contractor through SyferLock service engineers to inspect periodically during normal business hours Ordering Activity’s computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Ordering Activity). If Contractor is unable by remote telephone or on-line support to address an Error, then Contractor, at its sole discretion, may dispatch a software engineer to Ordering Activity’s site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Ordering Activity and shall be billed to Ordering Activity in accordance with the Federal Joint Travel Regulations. Dispatch shall be within two (2) business days after Contractor has determined at its sole discretion that telephone or on-line assistance is not sufficient.

Deliverable Support
Support Provided Second Tier*, On-Line and Phone Support during Support Hours
Support Hours Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. Contractor will reply to Ordering Activity’s call or email/on-line Error report within the time frames set forth in Section E-3 above.
Staff Access to technical support staff
Diagnostics & Resolution Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics & Resolution shall be conducted via remote assistance where possible.

* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Ordering Activity IT staff identified pre-approved for such purpose in writing by Contractor. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Ordering Activity personnel trained for such purpose and that no First Tier Support shall be rendered by Contractor.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached SyncDog, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   ooo) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   ppp) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   qqq) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   rrr) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   sss) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   ttt) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   uuu) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   vvv) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   www) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
xxx) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

yyy) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

zzz) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

aaaa) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

bbbb) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

cccc) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

dddd) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. All Manufacturer Specific Terms referencing third-party terms by reference are hereby superseded.

eeee) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

ffff) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms referencing customer to use the name or logo of a Government entity are hereby superseded.

gggg) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

hhhh) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms or the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

iiii) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

jjjj) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
11. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SYNCDOG, INC.**

**SYNCDOG LICENSE, WARRANTY AND SUPPORT TERMS**

**SYNCDOG LICENSE AGREEMENT**

1. **SyncDog Software; Ordering.**

   1.1 **SyncDog Software.** SyncDog licenses its software products on a subscription basis. Software is made available as a software-only (or “virtual”) solution, as a hosted solution, or on a physical appliance. Ordering Activity’s rights to use SyncDog software apply only to the SyncDog software licensed under an applicable Order.

   1.2 Reserved.

   1.3 **Delivery.** For downloadable versions of the SyncDog software, Ordering Activity may download the software from a link provided by SyncDog. For hosted versions of the SyncDog Solution, access shall be provided through a password-protected web interface.

2. **Definitions.** Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 2.

   “**SyncDog Solution**” means the object code versions of the SyncDog software identified on an Order and includes related Server Software, Client Software, Updates, and Documentation, but does not include Open Source Software, which is provided pursuant to Section 3.5.

   “**Affiliate**” means an entity, which directly or indirectly controls, is controlled by or is under common control with a Party to this Agreement.

   “**Client Software**” means the object code versions of the desktop client software for the licensed SyncDog Solution.

   “**Designated User**” means the number of users for whom Ordering Activity has purchased rights to use the SyncDog Solution, as set forth on the applicable Order, plus any additional True-Up Users added pursuant to Section 5.3 below. Designated Users may consist of: (i) employees and independent contractors of Ordering Activity and its Affiliates, and (ii) individual representatives of vendors and/or service providers of Ordering Activity and its Affiliates.

   “**Documentation**” means SyncDog’s standard written materials and specifications for the SyncDog Solution licensed by Ordering.

   “**Effective Date**” means (i) for Orders submitted to SyncDog, the date that SyncDog accepts the Order; or (ii) for orders submitted to a Channel Partner on a form other than an SyncDog Order form, the date SyncDog makes the software available to Ordering Activity for download or, for software provided on a physical appliance, the date of shipment.

   “**Hardware**” means computer equipment, if any, purchased from SyncDog by Ordering.

   “**Hosted Services**” means the remote access and use of a hosted version of the SyncDog Solution as hosted by SyncDog.

   “**License Term**” means the subscription period for use of the SyncDog Solution, as identified on the applicable Order.

   “**Maintenance Support Services**” means the support services provided by SyncDog as described in Section 4.

   “**Release**” means a version of the SyncDog Solution for which SyncDog charges a separate fee.

   “**Server Software**” means the object code server software version of the SyncDog Solution, as identified on the applicable Order.

   “**Update**” means additions, upgrades, or modifications to the SyncDog Solution. Updates do not include Releases.

3. **License Terms.**

   3.1 **License Grant.** SyncDog hereby grants to Ordering Activity during the License Term, a non-exclusive, non-transferable and non-sublicensable license to: (a) install and use the Client Software on supported environments for up to the number of Designated Users; and (b) use, access, and for SyncDog not hosted by SyncDog, copy the Server Software on supported environments for up to the number of copies identified on the Order for Ordering Activity’s internal business purposes.
3.2 License Restrictions. Ordering Activity shall not copy the SyncDog Solution except to make a reasonable number of copies for the purposes of security back-up, relocation or disaster recovery; provided, however, that Ordering Activity may make and use the number of copies of Client Software that it deems appropriate unless the number of copies of Client Software is restricted as set forth on the applicable Order. The SyncDog Solution may not be modified, disclosed, reverse-engineered, disassembled, or decompiled except to the extent allowed by applicable law. Ordering Activity shall not transfer, sell, license, sublicense, outsource, rent or lease the SyncDog Solution or use it for service bureau or other third-party use. All rights not expressly granted hereunder are reserved. Ordering Activity is solely responsible and liable for the use of and access to the SyncDog Solution by Designated Users and for all files and data transmitted, shared, or stored using the SyncDog Solution. Ordering Activity acknowledges and agrees that the licenses granted herein are neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SyncDog with respect to future functionality or features.

3.3 Ownership. All right, title, and interest, including without limitation all intellectual property rights, in and to the SyncDog Solution, including any and all modifications, enhancements, derivative works, Updates and Releases, are the sole and exclusive property of SyncDog and its licensors. Ordering Activity shall not remove, and shall reproduce on any permitted copies, all proprietary, copyright, trademark and trade secret notices contained in or placed upon the SyncDog Solution. Ordering Activity will take reasonable precautions (including the precautions used for Ordering Activity's own confidential information) to prevent the unauthorized use or disclosure of the SyncDog Solution, the Documentation, or the results of any performance or benchmark tests of the SyncDog Solution.

4. Maintenance Support Services. SyncDog provides Maintenance and Support Services for the License Term at no additional charge. As part of Maintenance Support Services, SyncDog will make available to Ordering Activity all Updates that SyncDog makes generally available to its other Ordering Activities.

5. Reports.

5.4 Automated Reporting. The Server Software periodically transmits technical data to SyncDog. That data does not include the content of any emails or attachments, file names or any personally identifiable information. The transmitted information contains aggregate non-personal usage information for each day the SyncDog Solution is in use, including but not limited to: (i) the number and type of messaging senders and recipients, (ii) account usage information, (iii) technical data about messaging transmissions and management; and (iv) the type of SyncDog Solution features used and related data. Ordering Activity will not in any way attempt to prevent the transmission or delivery of such usage data. SyncDog uses such data only for SyncDog's own internal business purposes. SyncDog only discloses such data (a) in an aggregated form with data from other Ordering Activities in which neither Ordering Activity's identity nor that of Designated Users are revealed, or (b) as required by applicable law.

6. Reserved.

7. Limited Warranties and Disclaimer.

7.1 Limited SyncDog Solution and Hardware Performance Warranty.

(a) Warranty. SyncDog warrants to Ordering Activity that: (i) the media on which the SyncDog Solution is furnished under normal use will be free from material defects in materials and workmanship for a period of thirty (30) days after the delivery date; (ii) the Hardware sold to Ordering Activity, if any, will be free from defects in materials and workmanship for a period of one (1) year from the date it is furnished to Ordering Activity; and (iii) the SyncDog Solution and Open Source Software will operate in substantial conformance with the Documentation for a period of thirty (30) days after the delivery date.

(b) Remedy. Any warranty claim must be made by written notice to SyncDog within the applicable warranty period. SyncDog’s liability and Ordering Activity's remedy under the warranty in subsection (a) above shall be replacement or repair of the defective media, Hardware or SyncDog Solution that does not meet SyncDog’s limited warranty and if SyncDog is unable to repair or replace defective components of the SyncDog Solution within a reasonable period of time (not to exceed thirty (30) days from SyncDog’s receipt of Ordering Activity’s notice), this Agreement shall terminate, in which case: (i) SyncDog shall (a) refund all license fees received by SyncDog for the SyncDog Solution (and Hardware fees, if any); and (b) the fees received by SyncDog for the unexpired term of Maintenance Support Services, and (ii) Ordering Activity shall (a) uninstall and destroy the nonconforming SyncDog Solution and certify in writing that it has done the same; and (b) return the Hardware, if any, at SyncDog’s expense. SyncDog is not liable under any warranty or otherwise for defects or liability caused by the use of the SyncDog Solution or Hardware in any manner or for any purpose other than that for which it was licensed to Ordering Activity, or for causes not within SyncDog’s reasonable control. Warranties are void if failures are caused in whole or in part by accident, abuse, misuse, or modifications not authorized in writing by SyncDog.

7.2 Virus Protection. SyncDog warrants to Ordering Activity that, to the best of SyncDog’s knowledge as of the date of delivery, the SyncDog Solution will be free from any viruses, spyware, trojans, or disabling or malicious code, provided that Server Software includes disabling mechanisms that prevent access to the Server Software following expiration of the License Term.

7.3 Limited Services Warranty. SyncDog warrants that for a period of thirty (30) days following installation or professional services, such services will be provided in a professional and workmanlike manner consistent with generally accepted industry standards. As Ordering Activity’s sole and exclusive remedy and SyncDog’s sole and exclusive liability for breach of the foregoing warranty, SyncDog will, at its sole option and expense, and provided that SyncDog is notified of any such breach during the warranty period, re-perform the services, or if SyncDog is unable to perform the services as warranted, refund the fees paid to SyncDog for the services.
Disclaimer. THE EXPRESS LIMITED WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SYNCDOG DOES NOT WARRANT THAT THE USE OF THE SYNCDOG SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL NONMATERIAL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. SYNCDOG MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PRODUCTS OR SERVICES PROVIDED BY ITS CHANNEL PARTNERS OR ANY HOSTED SERVICES PROVIDERS, AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY ACT OR OMISSION OF ANY CHANNEL PARTNER OR HOSTED SERVICES PROVIDERS. NO CHANNEL PARTNER OR HOSTED SERVICES PROVIDER SHALL HAVE ANY AUTHORITY TO BIND SYNCDOG TO ANY TERMS OR CONDITIONS OTHER THEN THOSE EXPRESSLY SET FORTH HEREIN.

8. Reserved.

9. Reserved.

10. Reserved.

11. Government Licensing. If the SyncDog Solution is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) the SyncDog Solution and accompanying materials constitute "commercial computer software" and "commercial computer software documentation" under paragraphs 252.227.14 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") or any successor regulations, and the Government is acquiring only the usage rights specifically granted in this Agreement; (ii) the SyncDog Solution constitutes "restricted computer software" under paragraph 52.227-14 of the Federal Acquisition Regulations ("FAR") or any successor regulations and the government's usage rights are defined in this Agreement and the FAR.
EC AMERICA RIDER TO PRODUCT SPECIFIC LICENSE TERMS AND CONDITIONS (FOR U.S. GOVERNMENT END USERS)

1. **Scope.** This Rider and the attached Symantec Corporation (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Antitrust Act (15 U.S.C. §§ 1 et seq.), the Kickback Act (31 U.S.C. § 3151), the False Claims Act (31 U.S.C. §§ 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order GPA 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contacting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Office and without the Government’s act or in the absence of a direct order to such an act, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct order to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
This GSA License Agreement (“Agreement”) is entered into by an authorized representative of the party entering into this Agreement (“Customer”) and the Symantec Systems, Inc. (“Symantec”) and is effective upon Customer’s execution of an applicable Purchase Order (“Order”).

1. License Terms.

1.1 Introduction. Any products and services made available to Customer by Symantec (“Products”) under this Agreement may be, or may include, a physical appliance or other hardware (“Hardware”), software (“Software”) and/or proprietary data (“BC Data”). Software and/or BC Data, whether embedded in memory or otherwise incorporated or loaded onto Hardware or made available via electronic delivery, are hereafter referred to as “Licensed Products”.

1.2 License. Subject to the terms and conditions of this Agreement, Symantec grants to Customer, during the applicable license term, a non-transferable, nonexclusive, worldwide license, subject to additional limitations set forth in this Section 1, to use the Licensed Products solely: (i) for internal purposes; (ii) in accordance with the Product license type (e.g., subscription or perpetual) and user type (for which the applicable fees have been paid) as set forth in the Purchase Order. Symantec’s current Product Licensing guide in effect as of July 1, 2014, is attached hereto as Exhibit A, which sets forth the license type and any specific restrictions associated with the Products.

1.3 Ownership. The Products are proprietary to Symantec or its licensors or suppliers. Customer acknowledges and agrees that: (a) the Products are protected under U.S. and international copyright and other intellectual property laws; (b) Symantec and its licensors retain all copyrights and other intellectual property rights in the Products; (c) there are no implied licenses under this license and any rights not expressly granted to Customer hereunder are reserved by Symantec; (d) Customer acquires no ownership or other interest (other than Customer license rights set forth above in Section 1.2) in or to the Licensed Products or any Hardware loaned to Customer; and (e) BC Data is confidential information of Symantec. Customer agrees that any suggestions, comments or other feedback provided by Customer to Symantec or its licensors with respect to the Products (“Feedback”) shall not be deemed to constitute confidential information of Customer or impose any confidentiality obligations on Symantec. Symantec shall be free to use, disclose, reproduce, license or otherwise distribute and exploit anonymized Feedback without any obligation, restriction or duty to account.

1.4 License Restrictions. Customer will not (a) copy the Licensed Products (except for a reasonable number of copies for back-up purposes), (b) modify, create derivative works of or works that incorporate the Licensed Products, (c) publish, distribute, rent, lease, sell, sublicense, assign or otherwise transfer the Products or any part thereof, (d) use or permit use of the Products for purposes of application development, (e) remove or obscure any Symantec or licensors’ copyright, trademark or other proprietary notices or legends from any portion of the Products or any associated documentation, (f) modify, block, circumvent or otherwise interfere with any authentication, license key or security measures in the Products, (g) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the Products (the interface information necessary to achieve interoperability of the Licensed Products with independently created computer programs will be provided by Symantec in the required jurisdictions, if requested, subject to the execution of a new GSA Customer Purchase Order), (h) use or permit use of the Products for use on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or aircraft communications systems, air traffic control, life support systems, human implantation, nuclear facilities or systems or weapons systems, or any other application known to Customer where product failure would lead to loss of life or catastrophic property damage, in which the failure of the program could lead directly to death, personal injury, or severe physical or environmental damage (“High Risk Activities”), (i) permit any Product export, re-export, download, resale or transfer, directly or indirectly: (x) into (or to a national, resident or government of) any prohibited destination or other countries subject to U.S. trade embargoes imposed by the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC) from time to time or other destination for which specific authorization would otherwise be required under the Export Administration Regulations (EAR) administered by the US Department of Commerce’s Bureau of Industry and Security (BIS) or other applicable laws, or (y) to any person identified on the OFAC List of Specially Designated Nationals and Blocked Persons, the BIS Denied Parties List, BIS Entity List or BIS Unverified List (see: http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern), or (j) use the Products for any proliferation or terrorist-related end-use. In addition, with respect to BC Data, Customer will not (i) repackage, redistribute, divert, license, sublicense, rent, disclose or resell BC Data to, or for the benefit of, any third party, (ii) use the BC Data on behalf of third parties, other than duly authorized employees, agents, consultants and/or independent contractors (collectively referred to as “persons”), (iii) use the BC Data other than in connection with the authorized use of Products, (iv) display the BC Data on any web site or application, (v) use the BC Data to develop products or for any other purposes not described in the documentation or (vi) allow the BC Data to become subject to any lien.

1.5 License Type Restrictions. If Symantec provides a Licensed Product that is (i) embedded, incorporated or loaded onto Hardware or (ii) made available for download to designated Hardware, then the license is restricted to use on that Hardware and subject to any additional applicable usage based restrictions. Licenses based on usage such as per computer, per node, per user (concurrent, active, authorized or otherwise) or per instance are restricted to the terms of the applicable usage license as such terms are defined in the associated documentation. If a Licensed Product is licensed for a specified term or on a subscription basis, rather than on a perpetual basis, then Customer is only permitted to use such Licensed Product during the applicable term. If a Licensed Product is provided to Customer for evaluation, the license term shall commence upon Symantec’s shipment (for Hardware and Software thereon) or electronic delivery (for Software downloaded from Symantec) of the Product, and shall last for the duration of the license set by
Symantec or, if none was set, sixty (60) days. If a Licensed Product is provided under a subscription and is provided with loaned Hardware, the license term shall commence upon Symantec’s shipment (for Hardware and Software thereon) or electronic delivery (for Software downloaded from Symantec) of the Product, and shall last for the duration of the subscription term.

1.6 Registration Requirements. Symantec may require registration in order to establish license entitlements for certain Products. Within sixty (60) days after the date a Product is first installed (“Registration Period”), Customer must complete registration requirements as instructed by the Products in order to continue to use all of the features of the Product. If Customer fails to complete the registration requirements prior to the expiration of the Registration Period, Product features may become inoperable and Customer may be unable to use such features until Customer has completed registration.

1.7 Support. Any updates, upgrades and bug fixes to the Products are available through the separate purchase of support services.

1.8 Loaned Products. Symantec retains all ownership rights to loaned Products. Customer will safeguard all loaned Products, will protect them from possible damage, will not loan them to others, and will not allow any lien to be imposed upon them. If there is any damage to a loaned Product beyond normal wear or if a loaned Product is lost or stolen, Customer will be liable for the costs of repair or replacement.

2. Audit Rights. Subject to Government security requirements, Customer agrees to maintain and make available to Symantec accurate and complete records of Customer’s installation/use of the Products for periodic audit as requested by Symantec during reasonable business hours. In addition, Customer acknowledges and agrees that Symantec may conduct periodic audits, to verify Customer’s installation, deployment and usage of the Licensed Products. If any such audit should disclose any unlicensed usage by the GSA Customer, Symantec will provide prompt notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. Data.

3.1 Communication between Products and Symantec. Certain Products may require (or be pre-configured for) communication with Symantec, or the delivery of information to Symantec about the Product (e.g., IP address, serial number, application identification, and other similar data), either upon installation or periodically. Subject to Government security requirements, Customer hereby consents to such communication and transmission of information.

3.2 Consent to Use of Data. Customer agrees that Symantec may collect, maintain, process and use diagnostic, technical, usage, authentication, location and other information, including but not limited to information about the Product, system and related peripherals, which is gathered periodically to facilitate the provision of services, Software updates, Product support and other services, to verify compliance with the terms of this Agreement, to comply with legal, governmental or contractual terms, and to otherwise analyze and improve Symantec’s products and services.

3.3 Safeguarding Personally Identifiable Information. If and when Customer submits any web or application use data to Symantec, Customer shall do so without submitting any information identifying any particular individual who attempted to access or actually accessed a specific URL address or application or any other data that might identify any particular user.

4. Customer’s Use of Products. Customer represents, warrants and covenants that:

4.1 Privacy Rights. Customer will take all appropriate measures to avoid violating any privacy rights of individuals in connection with Customer’s use of the Products.

4.2 Notice to End Users. As between Symantec and Customer, Customer shall have the sole obligation to provide notices to users of the Products that their use of Customer’s computers, electronic appliances and devices (and those of users on Customer’s network) may be monitored, inspected, decrypted, and/or re-encrypted and that the users should have no expectation of privacy or security when accessing the Internet or other applications.

4.3 [Intentionally Omitted].

5. Embedded Third Party Products. Certain components of the Products may incorporate third-party software programs, data and/or libraries (“Third Party Components”).

6. Open Source Software. Certain of the Products may include open source software. Notwithstanding any clause herein, all open source software is provided WITHOUT ANY WARRANTY INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Symantec will make available the required source code for the applicable open source software in response to Customer’s request emailed to opensource@Symantec.com.

7. Commercial Third Party Applications. As a convenience to Customer, Symantec may from time to time provide a copy of, or access to, third party products that are not available for licensing from Symantec (“Commercial Third Party Applications”), and which must be licensed by Customer directly from the applicable vendor of that Commercial Third Party Application. This Agreement does not create any right for Customer to use or access in any way such Commercial Third Party Applications. SYMANTEC MAKES NO WARRANTIES AND ASSUMES NO LIABILITY WITH RESPECT TO COMMERCIAL THIRD PARTY APPLICATIONS.

8. Export Control; Government Regulations. Customer hereby acknowledges and agrees that the Products, documents, technical data and any other materials delivered under this Agreement may be subject to U.S. export control and trade sanctions laws, regulations, legislative and regulatory requirements, rules and licenses, (“Export Control and Sanctions Rules”). Customer shall comply with the Export Control and Sanctions Rules including but not limited to the specific regulatory prohibitions of OFAC and the EAR as referenced in Section 1.4(l) herein and agrees that it alone is responsible for ensuring its compliance with Export Control and Sanctions Rules. Customer shall not do anything that would cause Symantec to be in breach of the Export Control and Sanctions Rules. As defined in FAR section 2.101, DFARS section
9. **Termination.** When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Symantec shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any non-appealable decision of the Contracting Officer.

10. **Effect of Termination.** Upon termination of this Agreement pursuant to the FAR, the Schedule Pricelist and any applicable Order, Customer agrees to cease all use of the Products and associated documentation, installed or otherwise, and within a reasonable time after termination, verify in writing to Symantec (if requested by Symantec) that the Licensed Products have been uninstalled, and for Hardware (e.g., loaned Hardware), return the Hardware to Symantec by using an RMA number obtained from Symantec or through its authorized reseller.

11. **Warranties and Disclaimer.**

11.1 **Hardware.** Symantec warrants that Hardware will be free from material defects in manufacturing and materials and perform substantially in conformance with their published specifications in the documentation for a period of twelve (12) months from shipment. Customer’s exclusive remedy and Symantec’s sole liability for breach of this warranty is that Symantec will repair or replace any such non-conforming or defective Hardware. If the Hardware fails during the warranty period, Customer shall promptly notify its reseller of the warranty claim for processing through Symantec via standard RMA Procedures as set forth in the Attached Exhibit B, and Symantec will repair or replace the Product in accordance with the applicable warranty procedures. Symantec warrants replacement Hardware for a period of ninety (90) days from shipment. Prior to returning any Hardware to Symantec, Customer shall completely erase all of Customer’s confidential information from any storage media. Replacement products and parts, including parts used in hardware repair, may be new or refurbished in Symantec’s sole discretion. The warranties set forth herein shall not apply in the event of improper installation, use other than in accordance with the instructions in the associated documentation, or unauthorized modification, alteration, addition or attempts to repair the Hardware.

11.2 **Software.** Symantec warrants that Software will substantially conform to the published specifications contained in the associated documentation for a period of ninety (90) days from the time the Software is shipped or made available for download to Customer. At Symantec’s own expense and as its sole obligation and Customer’s exclusive remedy for any breach of the foregoing warranty, Symantec shall use commercially reasonable efforts or endeavors to remedy any significant reproducible error in the Software that is reported to Symantec within the warranty period that Symantec can reasonably identify and confirm. The warranty set forth herein shall not apply in the event of improper installation, use other than in accordance with the instructions in the documentation, or unauthorized modification, alteration, addition or attempts to repair the Software.

11.3 **Services and BC Data.** Symantec makes no warranty with respect to Services or any BC Data.

11.4 **Reseller Warranties.** In the event that a Reseller provides any additional or separate warranties or commitments with respect to the Products, such warranties are solely between Customer and its reseller, and Customer shall not attempt to enforce any such warranties or commitments against Symantec.

12. **Warranty Disclaimers and Exclusions.**

12.1 EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 11.1 AND 11.2, CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING AS TO, BUT NOT LIMITED TO MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSES, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

12.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC DOES NOT WARRANT THAT: (A) THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (B) THE PRODUCTS ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE; (C) THE PRODUCTS, AS APPLICABLE, will always block access to the addresses and applications that are contained therein; (D) the PRODUCTS, AS APPLICABLE, will contain every foreseeable URL address, VIRUS or application that should potentially be blocked; (E) addresses, PATTERN FILES and applications contained in the PRODUCTS, AS APPLICABLE, will be appropriately categorized; (F) THE BC DATA WILL BE ACCURATE OR COMPLETE; OR (G) THE FEATURES, CATEGORIES, OR FUNCTIONALITIES OF THE PRODUCTS WILL BE AVAILABLE AT ANY TIME IN THE FUTURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE PRODUCTS (i) DO NOT VERIFY THE VALIDITY OF CERTIFICATES FOR WEBSITES IF CUSTOMER ENABLES SSL INSPECTION FUNCTIONALITY AND (ii) MAY DELIVER WEBSITES WITHOUT NOTIFYING CUSTOMER IF THE WEBSITE CERTIFICATES HAVE EXPIRED OR ARE OTHERWISE INVALID, AND THAT SYMANTEC HAS NO LIABILITY FOR EACH OF THE FOREGOING.

12.3 NOTWITHSTANDING ANY OTHER TERM HEREIN, Symantec makes no representations AND Undertakes no indemnification obligations regarding, arising from or related to the legality of monitoring, Inspection, DECRYPTION and/or RE- ENCRYPTION OF INFORMATION in any particular jurisdiction, and CUSTOMER shall be SOLELY responsible, and Symantec shall have no responsibility for determining that CUSTOMER’S proposed OR ACTUAL use of PRODUCTS OR SERVICES complies with applicable FEDERAL laws. CUSTOMER acknowledgeS and agreeS that IT IS solely responsible for selecting configurations, POLICIES AND PROCEDURES IN PRODUCTS THAT ARE CONFIGURABLE INCLUDING, WITHOUT LIMITATION, THE SELECTION OF FILTERED CATEGORIES AND WEB
APPLICATION CONTROLS, AND FOR ASSURING THAT THE SELECTION (A) conforms to CUSTOMER'S policies and procedures and (B) complies with all applicable FEDERAL law.

12.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: (A) THE MISUSE OF THE PRODUCTS OR SERVICES BY CUSTOMER OR BY THIRD PARTIES, EXCEPT AS PROVIDED BY FEDERAL LAW THAT WOULD OTHERWISE SUPERSEDE THE TERMS OF THIS AGREEMENT, (B) SECURITY BREACHES; (C) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, Or RECEIVED USING THE PRODUCTS OR SERVICES; OR (D) USE OR LOSS OF CUSTOMER’S SOFTWARE, FIRMWARE, INFORMATION OR MEMORY DATA CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY HARDWARE OR SOFTWARE RETURNED TO SYMANTEC UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY EVEN IF SYMANTEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12.5 CUSTOMER may link to third party sites through the use of the PRODUCTS. Third party sites are not under the control of Symantec, and Symantec is not responsible for the contents AND TRANSMISSIONS of any third party sites, any links contained in third party sites, or any changes or updates to third party sites.

12.6 The Products are not designed, manufactured or intended for use in High Risk Activities. Symantec specifically disclaims any express or implied warranty of fitness for High Risk Activities.

13. Disclaimers of Liability. CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC WILL HAVE NO LIABILITY WHATSOEVER and SPECIFICALLY excludes liability for (A) any indirect, incidental, special, or consequential damages or loss, (b) loss of profits, (c) loss of data, (d) BUSINESS INTERRUPTION) AND (E) costs of procuring substitute goods, software or services, even if it has been advised of the possibility of such damages, arising out of or in connection with this Agreement.

14. Limitation of Liability. Symantec’s maximum liability whether for breach of this Agreement or in tort (including negligence) or for any other common law or statutory cause of action arising out of or in connection with this Agreement is limited in the aggregate to two times the fees paid for the SPECIFIC PRODUCT OR Service giving rise to such liability. The foregoing exclusion/limitation of liability shall not apply (1) to personal injury or death caused by Symantec’s negligence; (2) for fraud; (3) for express remedies under the law that expressly supersede the terms of this Agreement; or (4) for any other matter for which liability cannot be excluded by law.

15. Miscellaneous. Neither the license to use nor this Agreement are assignable or transferable by Customer without prior written notice, to and written consent from, Symantec; any attempt to do so shall be void. Any consent granted by Symantec shall be subject to the restrictions set forth in this Agreement, including without limitation sub-section 4.3. Assignment by Symantec is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013). Any notice, report, approval or consent required or permitted hereunder shall be in writing. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The United Nations Convention on Contracts for the International Sale of Goods or the Uniform Commercial Code or similar statutes shall not apply with respect to this Agreement. Any waivers or amendments shall be effective only if made in writing by non-preprinted agreements clearly understood by both parties to be an amendment or waiver and signed by an authorized representative of the respective parties. Both parties agree that this Agreement, the Schedule Pricelist and any applicable GSA Customer Purchase Orders are the complete and exclusive statement of mutual understanding of the parties in regards to the Products and takes precedence over all previous agreements relating to the Products. This Agreement, however shall not take precedence over the terms of the Schedule Pricelist or any specific, negotiated terms on the GSA Customer’s Purchase Order.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Accepted by:

Customer: Symantec Systems, Inc.

Authorized Signature:   , Signature: 
Authorized Name:   Name
Printed:   Printed:   Title: 
Date:   Date: 

[Intentionally Omitted]
General Comments

Subscription Software with Loaned Hardware Some physical appliances (e.g., some CacheFlow appliances) may be available under a subscription software license with loaned hardware. At the end of the subscription term, customers must either renew their subscription or remove the appliance from service. If the subscription is not renewed or expires, customers shall return the physical appliance and software thereon promptly upon request.

Subscriptions are purchased on a term basis. Standard support is included as part of a subscription. For clarification, but without limitation, if a customer's usage (such as number of users) increases in the middle of a subscription term, the customer must execute a new GSA Customer Purchase Order for the additional usage. In addition, if a subscription expires, services may cease to function. Customers must renew their Subscriptions to avoid loss of functionality.

The customer is responsible for supplying the hardware for software and virtual appliances.

Common Definitions and Terms

“Instance” means an instance of software created by executing the software’s setup or install procedure or by duplicating an existing Instance. To run an Instance means to load an Instance of the software into memory and execute one or more of its instructions. Once running, an “Instance” is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

ProxySG

The ProxySG is an appliance (“ProxySG”) sold with a perpetual software license. The ProxySG is available as either MACH5 Edition or Proxy Edition. The Proxy Edition includes the MACH5 capabilities, with additional functionality. Certain ProxySG models (SG300-5, SG300-10, SG600-10, SG600-20, SG900-10, SG900-10B, SG900-20, SG510-5, SG510-10, SG810-20, SG810-5, SG810-10, SG81020) are restricted by maximum concurrent client IP addresses as set forth in the product descriptions. For these platforms, when the maximum number of client IP addresses is reached, the appliance will (depending on the user configuration) either bypass new connections or queue new connections for later handling. The platforms not specifically listed above will not cap the number of client IP, but will process traffic from devices until the appliance exhausts available resources.

Several optional add-on features are licensed separately subject to the execution of new or modified Orders. The following options are for use only on the specific ProxySG for which the option is licensed, unless otherwise noted.

- Symantec WebFilter (BCWF). BCWF is available as either a perpetual or a subscription license as set forth below. Both license types are sold on a per user basis. BCWF may be used for no more than the licensed number of BCWF users. For BCWF purposes, a user means any person that may access (through any number of devices such as a mobile device and desktop), at any time, the Internet via a ProxySG that utilizes BCWF. End users without Internet access need not be counted. BCWF licensed for ProxySG may be used on one or more licensed Symantec Proxy SG appliances provided that usage is in compliance with the above user restriction (BCWF is not available on the ProxySG MACH5 Edition). A perpetual license provides a onetime download of the BCWF database on the ProxySG, but this license does not allow database updates or use of Symantec’s WebPulse service. Database updates require a valid BCWF support contract in addition to a BCWF perpetual license.

- Subscription licenses are for the applicable term and must be renewed prior to expiration of the term for continuous service.

- Flash Capability Option. The Flash option, offered with a perpetual license, enables the ProxySG to control, cache and/or split Adobe Flash RTMP, RTMPT, and encrypted RTMP/T traffic.

- Encrypted Tap. The Encrypted Tap option, offered with a perpetual license, enables the ProxySG to process encrypted traffic and output the decrypted content for inspection by separately purchased external system(s). Encrypted Tap is not available on the ProxySG MACH5 edition.

- CachePulse. The CachePulse option, offered on a subscription basis for a specific term, provides caching rules and instruction updates. The CachePulse updates require that the ProxySG appliance has a valid support contract in addition to a CachePulse subscription license.

- Web Applications Protections (WAP). WAP, offered on a subscription basis for a specific term, allows the ProxySG to automatically utilize updated signatures, rules and data for the purposes of securing and protecting web application and content servers from direct Internet threats. WAP is not available on the ProxySG MACH5 Edition. WAP updates require that the ProxySG appliance has a valid support contract in addition to a WAP subscription license.

Secure Web Gateway Virtual Appliance

The Secure Web Gateway Virtual Appliance (SWG VA) is licensed on a subscription basis for the applicable term. SWG VA is licensed based on maximum concurrent client IP addresses. A SWG VA may not be used for more than the number of concurrent client IP addresses for which the subscription has been purchased, and only one Instance of MACH5 may be run per subscription. When the
maximum number of client IP addresses is reached, the appliance will (depending on the user configuration) either bypass new connections or queue new connections for later handling. Unlike the MACH5 Edition of ProxySG, the M5 VA is not upgradable to Proxy Edition or Secure Web Gateway VA.

The following optional add-on features are licensed separately pursuant to the execution of a new or modified Order:. The following options are for use only on the specific MACH5VA for which the option is licensed.

• Flash Capability Option. The Flash option, offered on a subscription basis for a specific term, enables the proxy to control, cache and/or split Adobe Flash RTMP, RTMPT, and encrypted RTMP/T traffic.
• CachePulse. The CachePulse option, offered on a subscription basis for a specific term, provides caching rules and instruction updates.

. Data Loss Protection (DLP)

DLP is an appliance sold with a perpetual software license. The DLP appliance requires a Network DLP and/or Discovery DLP. Network DLP (designed to inspect and apply policy on network communications such as HTTP, FTP, SMTP and Webmail) and Discovery DLP (designed to scan workstations and file services for sensitive data) are each sold on a subscription basis. Network DLP and Discovery DLP may not be used for more than the number of users for which the subscription has been purchased. For Network and Discovery DLP purposes only, a user means any unique log-in ID (employees, agents, consultants and/or independent contractors (collectively referred to as “personnel,” hereinafter or guests, etc.). Cloud Services

Symantec offers multiple cloud services, such as the Web Security Service (WSS), Mobile Device Security (MDS), and Hosted Reporting services, subject to the terms and conditions set forth in the separate Cloud Services Agreement and pursuant to the execution of a new or modified Order.

. ProxyAV

ProxyAV is an appliance sold with a perpetual software license. ProxyAV requires an anti-virus (AV) subscription to function. Subscriptions include updates to pattern files containing information to identify viruses or malicious software. A ProxyAV (and the applicable subscription) may be used for no more than the number of users for which the subscription has been purchased, which is stated as a quantity in an applicable Order. For purposes of ProxyAV, any person that may access the internet via one or more ProxySG(s) that are configured to send traffic to the applicable ProxyAV appliance for services. If a subscription expires or terminates, services will cease to update on the ProxyAV appliance.

. Content Analysis System

Content Analysis System (CAS) is an appliance sold with a perpetual software license. CAS requires a separately purchased applicable File Inspection subscription to function. A File Inspection subscription (designed to provide virus protection and file whitelisting functionality) provides updates to pattern files containing information to identify viruses or malicious software. A CAS appliance (and applicable subscription) may not be used for more than the number of users for which the subscription has been purchased, which is stated as a quantity in an applicable Order. A user means, for purposes of CAS, any person that may access the internet via one or more ProxySG(s) and/or SWG VA(s) that are configured to send traffic to the applicable CAS appliance for services. If a subscription expires or terminates, services will cease to update on the CAS appliance. CAS includes the capability to direct files to other products, but such technologies are subject to the execution of a new or modified Order.

. Malware Analysis Appliance

The Malware Analysis Appliance (MAA) is an appliance sold with a perpetual software license. In addition to the appliance perpetual license, a subscription license is required per appliance in order to receive access to profile plugins and detection pattern updates provided as part of the MAA’s functionality. As part of its functionality, third party applications can also be installed on a VM profile on the MAA. Symantec does not provide any such third party applications, with the exception of Microsoft® Windows® System software. Except for Windows, the user is solely responsible for procuring and licensing property any third party applications. The following applies with regard to Microsoft Windows:

The MAA Product is provided with a Microsoft Product Identifier Card that includes Microsoft Certificates of Authenticity (COAs), with the COAs provided based on the customer’s representation to Symantec as to whether or not it has in place a valid Microsoft Volume Licensing Agreement that includes Software Assurance.

. For customers purchasing the Symantec Malware Analysis Appliance with a valid Microsoft Volume Licensing Agreement that includes Software Assurance

User must have a valid Microsoft Volume Licensing agreement and must purchase Microsoft’s Software Assurance for each COA provided. The user is licensed to use any combination of the following Microsoft Windows Operating System products running in simultaneous Instances, provided that in no event may the number of simultaneously running Instances exceed the number of COAs provided on the Microsoft Product Identifier Card.

• Microsoft® Windows® XP Professional for Embedded Systems ESD (Virtualization Only)
• Windows® 7 Professional for Embedded Systems ESD (Virtualization Only)

. For customers purchasing the Symantec Malware Analysis Appliance without a valid Microsoft Volume Licensing Agreement that includes Software Assurance

If the user is not party to a valid Microsoft Volume Licensing agreement that includes Software Assurance, the COAs provided on the Microsoft Product Identifier card will be product-specific, with the same number of COAs provided for each available product. In this case, the user is licensed to use any combination of Microsoft Windows Operating System products running in simultaneous Instances, provided that in no event may the number of simultaneously running Instances exceed a number equal to the number of COAs provided for each relevant product. (That is, if, for example, the Microsoft Product Identifier card shipped with the product includes 12 COAs for Windows XP Professional and 12 COAs for Windows 7 Professional, the product may run up to 12 total Instances of any combination of products).

For these purposes, the following definitions apply:

• “Operating System Environment” or “OSE” means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system Instance or parts identified above. There are two types of OSEs, physical and virtual. A physical hardware system can have one Physical OSE and/or one or more Virtual OSEs.
• “Physical OSE” means an OSE that is configured to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software (e.g. Microsoft Hyper-V or similar third-party technologies) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar third-party technologies) is considered part of the Physical OSE.
• “Virtual OSE” means an OSE that is configured to run on a virtual hardware system.

SSL Visibility
The SSL Visibility Appliance is a physical appliance sold with a perpetual software license.

PacketShaper
The PacketShaper is an appliance sold with a perpetual software license. Depending on the platform, the options, requirements and restrictions vary.
Without any separately-purchased options, the PacketShaper 900, PacketShaper 1700, PacketShaper 3500, PacketShaper 7500, PacketShaper 10000 and PacketShaper 12000 appliances run in monitor only mode. In this mode, the PacketShaper only provides visibility functionality. Additional functionality is available pursuant to the execution of a new or modified Order. . The following options are for use only on the specific PacketShaper for which the option is purchased.
• Shaping Keys provide Quality of Service (QoS) and packet shaping. Shaping is licensed on a perpetual basis by the throughput managed. For example, if a customer wants to manage a 10 Mbps WAN link he or she would purchase a 10M Shaping license that may manage 10 Mbps inbound and 10 Mbps outbound or 20 Mbps of total bandwidth.
• Compression Keys compress traffic on the customer’s network and are provided with a perpetual license.
• The PacketShaper 12000 offers an “ISP 10000” option allowing the creation and use of up to 10,000 classes when using the ISP build of software. Without this license, the system will limit to 5,000 classes with the ISP build or 2,048 classes when running the standard build.
• WebPulse Services. WebPulse Services queries Symantec’s WebPulse cloud service for URL category and web application classification information. Currently, use of WebPulse services on a PacketShaper product requires a valid support contract for the specific PacketShaper product. The PacketShaper product will regularly query Symantec’s support servers to verify entitlement.

The PacketShaper S500 (PS-S500) requires a separately purchased shaping license to function (unlike other PacketShapers which have monitor only option). Shaping is subject to a perpetual license, which restricts the inbound and outbound throughput that is managed by the PS-S500. For example, if a customer wants to manage a 5 Gbps WAN link they would purchase a 5G Shaping license that can manage up to 5 Gbps inbound bandwidth and 5 Gbps outbound bandwidth. Increasing the licensed bandwidth also increases certain other specifications of the unit including dynamic partitions as well as managed hosts and flows.

The following optional add-on feature is licensed separately for the PS-S500 pursuant to the execution of a new or modified Order. The option is for use only on the specific PacketShaper for which the option is licensed.
• WebPulse Services. WebPulse Services queries Symantec’s WebPulse cloud service for URL category and web application classification information. Currently, use of WebPulse services on a PacketShaper requires a valid support contract for the specific PacketShaper pursuant to the execution of an Order.
. The PacketShaper will regularly query Symantec’s support servers to verify entitlement.
Notes: the PacketShaper S500 does not offer compression or acceleration options or varying class levels.

CacheFlow
CacheFlow is an appliance sold with a perpetual software license (and, in some cases, as a subscription with loaned hardware as described below) pursuant to the execution of an Order.
. The following data is available for CacheFlow appliances.
• Symantec WebFilter (BCWF). BCWF for CacheFlow is licensed 1) on a per CacheFlow appliance basis or 2) based on the number of concurrent (maximum simultaneous) users with a user being defined as any end user that accesses the Internet via a CacheFlow that utilizes BCWF. This perpetual license is offered for a one time download of the BCWF database on the CacheFlow device, but this license does not allow database updates or use of Symantec’s WebPulse service. Database updates require a valid BCWF support contract pursuant to the execution of an Order.
• CachePulse. The CachePulse service provides caching rules and instruction updates. CachePulse service is provided for the CacheFlow appliance with a valid support contract for such appliance and pursuant to the execution of an Order.

Other CacheFlow Notes: CacheFlow appliances are configured to send information consisting of aggregated statistics to Symantec subject to Government security requirements if agreed-upon and stated in the Order. This functionality cannot be disabled. Such information includes, but is not limited to, basic network configuration for each network interface; bandwidth used by HTTP services; HTTP request/response attributes (e.g. cacheable, non-cacheable, non-cacheable reasons); operation of the object cache (per-disk and overall); raw system resources such as: per-cpu usage and memory pressure, and calculated resources such as: resource load, bandwidth savings; hardware diagnostics reporting (disks, memory, networks interfaces, and power supply); and CachePulse feedback consisting of domain popularity and caching effectiveness. Symantec will also collect health information for appliances that are currently or was recently in a ‘Warning’ or ‘Critical’ state.
If BCWF is enabled, a summary containing content filter configuration details (including the database provider, last upload time, and services in use) is included. Following a reboot of the appliance, the following information will also be sent to Symantec: the reason for the restart; software traceback information, in case of an unexpected software crash (this data allows for preliminary software crash analysis, before a more detailed (and larger) context core file is uploaded to Symantec); core image summary, specifically detailing the number of core images on the appliance.

Security Analytics Platform
The Security Analytics platform is offered as a physical or virtual appliance or as software. Physical appliances are sold with a perpetual software license pursuant to the execution of an Order.
Software and Virtual Appliances are licensed on either a perpetual or subscription basis.
Several optional add-on features are licensed separately pursuant to the execution of an Order. The following options are for use only on the specific Security Analytics platform for which the option is licensed.
Retention. Security Analytics includes a base amount of indexed data retention. Retention defines the amount of aggregate Metadata and Packet storage data a Security Analytics appliance will be able to address and is enforced in the system. To increase retention, additional storage must be ordered pursuant to the execution of a new or modified Order.

- ThreatBLADEs. ThreatBLADE subscriptions provide additional functionality to the Security Analytics platform. Subscriptions allow access to the applicable ThreatBLADE service for the subscription term. ThreatBLADE subscriptions may not be used for more than the number of users for which subscriptions have been purchased as indicated in an applicable Order. For purposes of ThreatBLADEs, a “user” means any person who may have his or her activity recorded, at any time during the subscription period, in the Security Analytics platform(s).
- WebThreatBLADE provides URL category information as well as file information for content traversing Web protocols, i.e. HTTP and unencrypted HTTPS.
- FileThreatBLADE provides file information for content traversing File Transfer protocols, i.e. FTP, IFTP, NFS, SMB.
- MailThreatBLADE provides file information for content traversing the E-Mail protocols, i.e. SMTP, POP3 and IMAP.

ThreatBLADE updates require a valid support contract for the Security Analytics appliance pursuant to the execution of an Order.

Security Analytics Platform Central Manager. The Security Analytics Central Manager is offered as a physical or virtual appliance or as software pursuant to the execution of an Order. Physical appliances are sold with a perpetual software license. Software and Virtual Appliances are licensed on either a perpetual or subscription basis. X-Series

The X-Series system consists of a chassis and separately purchased hardware modules and hardware accessories. The minimum X-Series configuration for a functioning system requires the ordering of each of the following modules, which are offered on a perpetual basis for use on an X-Series chassis pursuant to the execution of a new or modified Order.

- Application Processor Module (APM). APMs provide the capability to run applications on the X-Series chassis. X-Series systems require at least one APM. APMs run additional software applications from third parties (such as Checkpoint, Imperva, Cisco (Sourcefire) or Intel Security Public Sector, Inc.) that must be separately licensed from the applicable third party and may have additional license restrictions.
- Network Processor Module (NPM). NPMs provide network connectivity to the external network and within the X-Series system. X-Series systems require at least one NPM.
- Control Processor Module (CPM). CPMs provide a variety of controls the X-Series system. X-Series systems require at least one CPM.

In addition, the following option is licensed separately pursuant to the execution of a new or modified Order and is used only on the specific X-Series for which the option is licensed.

- X-Series Routing Software (RSW). The RSW application is licensed on a perpetual basis and is a set of dynamic routing protocol features that can be applied to an X-Series system. RSW may only be used on a single X-Series system. An additional RSW license must be purchased pursuant to the execution of a new or modified Order for each X-Series system on which the RSW will run.

X-Series Management System (XMS)

The X-Series Management System (XMS) is software offered with a perpetual license for managing X-Series systems. Customers may not run more than one Instance of XMS for each XMS license purchased. XMS may be used to manage no more than the number of X-Series systems for which licenses(s) have been purchased.

Management Center

Management Center (MC) is a virtual appliance with a subscription license for a specific term. MC is designed to run on a virtual machine (VMware ESX 5.x, Fusion 6.x). Customers may not run more than one Instance of MC for each MC subscription purchased. A MC virtual appliance may be used to manage no more than the number of devices (IP addresses or other registered devices in the MC) for which subscription(s) have been purchased.

Reporter

Reporter is software offered with a perpetual license for reporting on ProxySG access logs. Customers may not run more than one Instance of Reporter for each Reporter purchased. Additional license(s) are required for each Instance of Symantec Reporter and pursuant to the execution of a new or modified Order. Reporter has three versions with different licensing restrictions:

- Standard Edition. Reporter Standard Edition is available without an additional fee with a valid ProxySG support contract and may not be used to report on more than 50 million log lines.
- Enterprise Edition. Reporter Enterprise Edition may not be used to report on more than 2.5 billion log lines and has a perpetual software license.
- Premium Edition. Reporter Premium Edition may not be used to report on more than 20 billion log lines and has a perpetual software license.

Director

Director is offered as a physical or virtual appliance, with a perpetual software license (for both the physical and virtual appliance), for managing ProxySGs, MACHS VAs and/or SWG VAs. Director may only be used to manage a maximum of 300 (physical and/or virtual) appliances at any time. For the Director virtual appliance, customers may not run more than one Instance of Director for each Director virtual appliance license purchased.

IntelligenceCenter

IntelligenceCenter (IC) is software offered with a perpetual license for reporting on PacketShapers. The IC base license includes the IC application and a single Data Collector. With the base license, a customer may report on only a single device. A customer may run no more than one Instance of IC per base license.

- Additional Devices. Additional device upgrade license(s) must be ordered pursuant to the execution of a new or modified Order to report on additional devices. Device upgrade licenses require a base license. The number of devices configured to be reported on by IC may not exceed the number of devices stated in an applicable Order.
- Data Collector (DC). Additional DC licenses are required to collect data in more than one database. A customer may run no more than one Instance of DC per DC license.
PolicyCenter

PolicyCenter (PC) is software offered with a perpetual license for managing PacketShapers. With the PC base license, a customer may manage only a single device. A customer may run no more than one Instance of PC per base license. Additional Devices. Additional device upgrade license(s) must be purchased pursuant to the execution of a new or modified Order to report on additional devices. Device upgrade licenses require a base license. The number of devices configured to be reported on by IC may not exceed the number of devices for which license fees have been paid.

- Data Collector (DC). Additional DC licenses are required to collect data in more than one database. A customer may run no more than one Instance of DC per DC license.

Effective October 24, 2012, select RMA's will consist of either a Field Replaceable Unit (FRU) or a Chassis Replacement Unit (CRU) as defined in the below table. Symantec will no longer ship full replacement units for the product models listed in the below table. If Symantec determines a replacement chassis is required after appropriate trouble shooting with diagnostic tools, Symantec will ship the CRU as replacement hardware. The CRU is a replacement chassis without the following parts: System Hard Drives, Power Supplies, Power Cables, Rail Kits and Add-on cards (Excluded Parts). Customers are required to remove the Excluded Parts, subject the exception below*, from their existing hardware and transfer them to the CRU unit prior to shipping the defective unit to Symantec. Any Excluded Parts received by Symantec will be forfeited and not returned. This CRU policy does not apply to RTF hardware support.

EXHIBIT B

RMA PROCEDURES

(a) Symantec – Returned Material Authorization (RMA) Process
Symantec provides RMA Advanced Hardware Exchanges to those customers who have a valid entitlement under product warranty or a service contract. Below are the steps to take to initiate a RMA.
1. Open a technical support case via BlueTouch Online or contact Technical Support.
2. A technical support engineer will work with you to troubleshoot the issue and verify whether a hardware repair or replacement is required.
3. If a hardware replacement is required, the technical support engineer will initiate the RMA by obtaining the following customer information:
   - Company Name
   - Address
   - Contact Name
   - Contact Phone Number
   - Contact email
   - Problem Description
   - Product Model Number
   - Product
   - Serial Number
4. When the RMA has shipped, the customer will receive a shipment notification which will include instructions regarding the defective hardware return.
5. If the defective hardware is not returned in a timely manner (within 10 days), the customer will be contacted. Customers may also contact Symantec for return instructions, rma@Symantec.com.

(b) RMA Return Instructions (Advanced Exchange)
When returning products to Symantec Systems, follow the return instructions provided with the RMA replacement shipment. Symantec products should be returned within 5 business days from date of receipt. The customer will receive a follow up phone call from Symantec Systems to ensure the return takes place.
Parts deemed consumable by Symantec do not require a RMA and will not include return instructions unless required by local environmental regulations (such as the European Union WEEE Regulation). Parts such as power supplies and fans fall into this category. Defective products that are not received by Symantec Systems within ten (10) days of receipt are subject to invoicing for the full GSA Schedule List Price. All material returned to Symantec Systems must follow the return instructions. Symantec Systems reserves the right to refuse shipments that do not include (at minimum) the RMA number. For inspection prior to repair, all parts should be free from dirt, grease, oil, finger paint, localized permanent marks, and other foreign substances. Dust caused by shipping material chafing is acceptable if it can be brushed off or blown off with air. Symantec Systems reserves the right to refuse shipments that are not in acceptable repair condition. If you have any questions regarding a RMA return or did not receive return instructions with your shipment, please contact rma@Symantec.com.

(c) Requesting Status on Existing RMA’s
Forward all questions regarding shipment, status, customs, duties and taxes to rma@Symantec.com. Please reference your RMA number when submitting these inquiries. Customers may also access RMA status via BlueTouch Online utilizing the RMA Status link.

(i) Symantec Hardware Replacement Shipping Terms and Conditions
Symantec’s hardware replacement shipping terms are determined by the active Support Agreement level in place for the product serviced under the RMA.

Hardware Replacement

(1) Chassis Replacement Unit Policy
Effective October 24, 2012, select RMA’s will consist of either a Field Replaceable Unit (FRU) or a Chassis Replacement Unit (CRU) as defined in the below table. Symantec will no longer ship full replacement units for the product models listed in the below table. If Symantec determines a replacement chassis is required after appropriate trouble shooting with diagnostic tools, Symantec will ship the CRU as replacement hardware. The CRU is a replacement chassis without the following parts: System Hard Drives, Power Supplies, Power Cables, Rail Kits and Add-on cards (Excluded Parts). Customers are required to remove the Excluded Parts, subject the exception below*, from their existing hardware and transfer them to the CRU unit prior to shipping the defective unit to Symantec. Any Excluded Parts received by Symantec will be forfeited and not returned. This CRU policy does not apply to RTF hardware support.

*Excluded Parts:
- System Hard Drives
- Power Supplies
- Power Cables
- Rail Kits
- Add-on cards
**Licensing SG Products**

Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the recipient will be running. You may therefore need to downgrade or upgrade the proxy upon receipt. This can be done by navigating to http://download.Symantec.com.

**Licensing SGOS version 3 or greater**

Symantec has already transferred your license and software options from the defective unit to your replacement unit in Symantec's licensing database. The defective unit is now registered under Symantec and has a 60 day demo license key associated with the unit. To license the replacement unit, retrieve the new key while configuring your unit through the Management Console (Maintenance/Licensing/Install/Retrieve active keys from Symantec). This will require your BlueTouch Online login.

**Licensing AV Products**

To license the replacement unit, log into Symantec Licensing Portal, click Symantec ProxyAV, click Swap Licenses From Hardware Serial Number: enter defective unit SN, To Hardware Serial Number: enter replacement unit SN, click Next, click Swap. Retrieve License file from Management Console of replacement ProxyAV unit.

(i) Licensing PacketShaper Products

Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the customer will be running. You may therefore need to downgrade or upgrade the PacketShaper upon receipt. This can be done by navigating to http://download.Symantec.com.

Once you receive the license key(s) from support, follow the instructions below for license key installation.

1. Login to the PacketShaper command-line interface via the console cable, SSH or telnet.
2. Copy and paste the lines provided (setup key add …).
3. To complete the installation, issue the command “reset” to reboot the unit.
4. To verify the installation was successful, issue the command, “setup key show”.

**X-Series RMA Process**

If Symantec diagnoses that a reported problem is due to a failed X-Series product, Customer may request a Return Material Authorization ("RMA") number. After Symantec assigns one, Customer will be authorized to return the defective product to a Symantec repair facility. After assigning an RMA number, Symantec will make commercially reasonable efforts to ship that day, at its expense, a replaceable hardware component to arrive at the Customer's designated location following completion of Symantec's diagnosis, provided that the diagnosis is completed prior to 4:00 p.m. EST for shipments out of Symantec's U.S. facility. If diagnosis is completed after that time, then Symantec shall dispatch a field replaceable hardware product component for arrival at the Customer's site location on the second business day with fastest delivery option following completion of diagnosis. Replacement products may be refurbished or contain refurbished materials. Customer shall promptly return the failed component to Symantec, which component shall become the property of Symantec on an exchange basis. If Symantec does not receive the failed component within fifteen (15) business days of receipt of the replacement component, then Symantec shall invoice the then- GSA Schedule List Price of the replaced component. Symantec will ship replacement products on a next available business day delivery basis, but actual delivery time of hardware components to a Customer's designated location is subject to transit time. The term “business day” refers to a week day other than a federal holiday. The Customer is responsible for the following:

- Obtaining an RMA number from the Symantec technical support center
- Packaging and shipping RMA products according to Symantec’s standard RMA procedure
- Providing accurate site locations, contact information and specific product information with regard to all Symantec products under maintenance
- Where Symantec authorized engineers are to provide on-site replacement services, providing the Symantec field engineer with access to the site, subject to Government security requirements.

**RMA Licensing Information**

Please follow the RMA procedures listed below to properly register the unit received with Symantec Systems. If you have any questions pertaining to the licensing process, contact Symantec at customersupport@Symantec.com.

1. **Licensing SG Products**
   - Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the recipient will be running. You may therefore need to downgrade or upgrade the proxy upon receipt. This can be done by navigating to http://download.Symantec.com.
   - For customers running SGOS version 3 or greater, Symantec has already transferred your license and software options from the defective unit to your replacement unit in Symantec's licensing database. The defective unit is now registered under Symantec and has a 60 day demo license key associated with the unit. To license the replacement unit, retrieve the new key while configuring your unit through the Management Console (Maintenance/Licensing/Install/Retrieve active keys from Symantec). This will require your BlueTouch Online login.

   (ii) **RMA Cut-Off Times**

   *(Daylight Savings Time observances may affect RMA cut-off times where applicable)*

   **Support Center**

   **Standard Business Hours**

   **RMA Cut-Off Time**

   Americas  
   Mon-Fri: 06:00 to 18:00  
   Pacific Time Zone  
   Mon-Fri: 13:00  
   Pacific Time Zone

   (d) **RMA Licensing Information**

   Please follow the RMA procedures listed below to properly register the unit received with Symantec Systems. If you have any questions pertaining to the licensing process, contact Symantec at customersupport@Symantec.com.

   1. **Licensing SG Products**
      - Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the recipient will be running. You may therefore need to downgrade or upgrade the proxy upon receipt. This can be done by navigating to http://download.Symantec.com.
      - For customers running SGOS version 3 or greater, Symantec has already transferred your license and software options from the defective unit to your replacement unit in Symantec's licensing database. The defective unit is now registered under Symantec and has a 60 day demo license key associated with the unit. To license the replacement unit, retrieve the new key while configuring your unit through the Management Console (Maintenance/Licensing/Install/Retrieve active keys from Symantec). This will require your BlueTouch Online login.

   (ii) **Licensing AV Products**

   To license the replacement unit, log into Symantec Licensing Portal, click Symantec ProxyAV, click Swap Licenses From Hardware Serial Number: enter defective unit SN, To Hardware Serial Number: enter replacement unit SN, click Next, click Swap. Retrieve License file from Management Console of replacement ProxyAV unit.

   (1) **Licensing PacketShaper Products**

   Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the customer will be running. You may therefore need to downgrade or upgrade the PacketShaper upon receipt. This can be done by navigating to http://download.Symantec.com.

   Once you receive the license key(s) from support, follow the instructions below for license key installation.

   1. Login to the PacketShaper command-line interface via the console cable, SSH or telnet.
   2. Copy and paste the lines provided (setup key add …).
   3. To complete the installation, issue the command “reset” to reboot the unit.
   4. To verify the installation was successful, issue the command, “setup key show”.

   (c) **X-Series RMA Process**

   If Symantec diagnoses that a reported problem is due to a failed X-Series product, Customer may request a Return Material Authorization ("RMA") number. After Symantec assigns one, Customer will be authorized to return the defective product to a Symantec repair facility. After assigning an RMA number, Symantec will make commercially reasonable efforts to ship that day, at its expense, a replaceable hardware component to arrive at the Customer's designated location following completion of Symantec's diagnosis, provided that the diagnosis is completed prior to 4:00 p.m. EST for shipments out of Symantec's U.S. facility. If diagnosis is completed after that time, then Symantec shall dispatch a field replaceable hardware product component for arrival at the Customer's site location on the second business day with fastest delivery option following completion of diagnosis. Replacement products may be refurbished or contain refurbished materials. Customer shall promptly return the failed component to Symantec, which component shall become the property of Symantec on an exchange basis. If Symantec does not receive the failed component within fifteen (15) business days of receipt of the replacement component, then Symantec shall invoice the then- GSA Schedule List Price of the replaced component. Symantec will ship replacement products on a next available business day delivery basis, but actual delivery time of hardware components to a Customer's designated location is subject to transit time. The term “business day” refers to a week day other than a federal holiday. The Customer is responsible for the following:

   - Obtaining an RMA number from the Symantec technical support center
   - Packaging and shipping RMA products according to Symantec's standard RMA procedure
   - Providing accurate site locations, contact information and specific product information with regard to all Symantec products under maintenance
   - Where Symantec authorized engineers are to provide on-site replacement services, providing the Symantec field engineer with access to the site, subject to Government security requirements.
Failure to comply with any of the requirements in this section could affect Symantec's ability to provide effective service for your XSeries product, and Symantec cannot be held responsible where its service is affected by the customer’s failure to comply.

# SYMANTEC MAINTENANCE AND SUPPORT GSA PRICING (CATEGORY M)

<table>
<thead>
<tr>
<th>Price Category</th>
<th>Product Code</th>
<th>Description</th>
<th>MSRP (%)</th>
<th>GSA Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product New Support (excluding CacheFlow)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>Standard</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; Return to Factory Hardware Support</td>
<td>13.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Standard Plus</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; Same Day Shipment Hardware Support</td>
<td>15.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Advanced</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; Next Business Day Delivery Hardware Support</td>
<td>17.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Onsite Advanced</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; Next Business Day Delivery Hardware Support with Onsite Technician</td>
<td>19.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Premium</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; 9x5x4 Hour Parts Replacement Hardware Support</td>
<td>20.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Premium Plus</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; 24x7x4 Hour Parts Replacement Hardware Support</td>
<td>23.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Onsite Premium</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>22.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Onsite Premium Plus</td>
<td>End Customer Support, Level 1-&gt;3 Software Support &amp; 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>25.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Software Support</td>
<td>End Customer Support, Level 1-&gt;3 Software Support</td>
<td>12.0%</td>
<td>8%</td>
</tr>
</tbody>
</table>

**Software Product New Support (Applies to Perpetual Licenses for BCWF, SWG VA and Director VA)**

<table>
<thead>
<tr>
<th>Price Category</th>
<th>Product Code</th>
<th>Description</th>
<th>MSRP (%)</th>
<th>GSA Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>SW Product Support</td>
<td>End Customer Software Product Support, Level 1-&gt;3</td>
<td>18.0%</td>
<td>8%</td>
</tr>
</tbody>
</table>

**Hardware Only Product New Support (excluding CacheFlow)**

**NOTE:** Hardware (HW) only support does not come with Software (SW) support (this must be purchased separately). HW support does not allow for any download or upload capabilities for your HW (this is only provided through your SW support entitlement).
<table>
<thead>
<tr>
<th>M</th>
<th>Standard HW</th>
<th>End Customer Support, Return to Factory Hardware Support</th>
<th>1.0%</th>
<th>8%</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>Standard Plus HW</td>
<td>End Customer Support, Same Day Shipment Hardware Support</td>
<td>3.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Advanced HW</td>
<td>End Customer Support, Next Business Day Delivery Hardware Support</td>
<td>5.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Onsite Advanced</td>
<td>End Customer Support, Next Business Day Delivery Hardware Support with Onsite Technician</td>
<td>7.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Premium HW</td>
<td>End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support</td>
<td>8.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Premium Plus HW</td>
<td>End Customer Support, 24x7x4 Hour Parts Replacement Hardware Support</td>
<td>11.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Onsite Premium HW</td>
<td>End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>10.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>Onsite Prem Plus HW</td>
<td>End Customer Support, 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>13.0%</td>
<td>8%</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------</td>
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</tr>
</tbody>
</table>

**Product Renewal Support (excluding CacheFlow)**

<table>
<thead>
<tr>
<th>M</th>
<th>R-Standard</th>
<th>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; Return to Factory Hardware Support</th>
<th>13.0%</th>
<th>8%</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>R-Standard Plus</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; Same Day Shipment Hardware Support</td>
<td>15.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Advanced</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; Next Business Day Delivery Hardware Support</td>
<td>17.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Onsite Advanced</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; Next Business Day Delivery Hardware Support with Onsite Technician</td>
<td>19.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Premium</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; 9x5x4 Hour Parts Replacement Hardware Support</td>
<td>20.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Premium Plus</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; 24x7x4 Hour Parts Replacement Hardware Support</td>
<td>23.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Onsite Premium</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>22.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Onsite Premium Plus</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support &amp; 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>25.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Software Support</td>
<td>Renewal Service, End Customer Support, Level 1-&gt;3 Software Support</td>
<td>12.0%</td>
<td>8%</td>
</tr>
</tbody>
</table>

**Software Product Renewal Support (Applies to Perpetual Licenses for BCWF, SWG VA and Director VA)**

| M          | R-SW Product Support                     | Renewal Service, End Customer Software Product Support, Level 1->3 | 18.0% | 8% |

**Hardware Only Product Renewal Support (excluding CacheFlow)**

**NOTE:** Hardware (HW) only support does not come with Software (SW) support (this must be purchased separately). HW support does not allow for any download or upload capabilities for your HW (this is only provided through your SW support entitlement).

<table>
<thead>
<tr>
<th>M</th>
<th>R-Standard HW</th>
<th>Renewal Service, End Customer Support, Return to Factory Hardware Support</th>
<th>1.0%</th>
<th>8%</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>R-Standard Plus HW</td>
<td>Renewal Service, End Customer Support, Same Day Shipment Hardware Support</td>
<td>3.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Advanced HW</td>
<td>Renewal Service, End Customer Support, Next Business Day Delivery Hardware Support</td>
<td>5.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Onsite Advanced HW</td>
<td>Renewal Service, End Customer Support, Next Business Day Delivery Hardware Support with Onsite Technician</td>
<td>7.0%</td>
<td>8%</td>
</tr>
<tr>
<td>M</td>
<td>R-Premium HW</td>
<td>Renewal Service, End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support</td>
<td>8.0%</td>
<td>8%</td>
</tr>
<tr>
<td>Price Category</td>
<td>Product Code</td>
<td>Description</td>
<td>MSRP (%)</td>
<td>GSA Discount</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------</td>
<td>-------------</td>
<td>----------</td>
<td>--------------</td>
</tr>
<tr>
<td>M BTSP Advanced</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; Next Business Day Delivery Hardware Support</td>
<td>16%</td>
<td>8%</td>
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</tr>
<tr>
<td>M BTSP Advanced HW</td>
<td>BlueTouch Partner Support, Next Business Day Delivery Hardware Support</td>
<td>5%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Onsite Advanced</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; Next Business Day Delivery Hardware Support with Onsite Technician</td>
<td>18%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Onsite Advanced HW</td>
<td>BlueTouch Partner Support, Next Business Day Delivery Hardware Support with Onsite Technician</td>
<td>7%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Onsite Prem Plus HW</td>
<td>BlueTouch Partner Support, 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>13%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Onsite Premium</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>21%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Onsite Premium HW</td>
<td>BlueTouch Partner Support, 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>10%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Onsite Premium Plus</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician</td>
<td>24%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Premium</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; 9x5x4 Hour Parts Replacement Hardware Support</td>
<td>19%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Premium HW</td>
<td>BlueTouch Partner Support, 9x5x4 Hour Parts Replacement Hardware Support</td>
<td>8%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Premium Plus</td>
<td>BlueTouch Partner Support, L3 Software Support &amp; 24x7x4 Hour Parts Replacement Hardware Support</td>
<td>22%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Premium Plus HW</td>
<td>BlueTouch Partner Support, 24x7x4 Hour Parts Replacement Hardware Support</td>
<td>11%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Software Support</td>
<td>BlueTouch Partner Support, Level 3 Software Support</td>
<td>11%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Standard</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; Return to Factory Hardware Support</td>
<td>12%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Standard HW</td>
<td>BlueTouch Partner Support, Return to Factory Hardware Support</td>
<td>1%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Standard Plus</td>
<td>BlueTouch Partner Support, Level 3 Software Support &amp; Same Day Shipment Hardware Support</td>
<td>14%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP Standard Plus HW</td>
<td>BlueTouch Partner Support, Same Day Shipment Hardware Support</td>
<td>3%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>M BTSP SW Product Support</td>
<td>BlueTouch Partner Software Product Support, Level 3</td>
<td>18%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>Model</td>
<td>Description</td>
<td>Software Support</td>
<td>Hardware Support</td>
<td>Additional</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------------</td>
<td>------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>BTSP-SA Advanced</td>
<td>Security Analytics, BlueTouch Partner Support, Level 3 Software Support &amp; Next Business Day Delivery Hardware Support</td>
<td>21%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>BTSP-SA Advanced</td>
<td>Security Analytics, BlueTouch Partner Support, Next 3 Software Support</td>
<td>8%</td>
<td>8% HW Business Day</td>
<td></td>
</tr>
<tr>
<td>BTSP-SA Software Support</td>
<td>Security Analytics, BlueTouch Partner Support, Level 3 Software Support</td>
<td>13%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>BTSP-SA Standard Plus</td>
<td>Security Analytics, BlueTouch Partner Support, Level 3 Software Support &amp; Same Day Shipment Hardware Support</td>
<td>19%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>BTSP-SA Standard</td>
<td>Security Analytics, BlueTouch Partner Support, Same Day Shipment Hardware Support</td>
<td>6%</td>
<td>8% Plus HW Same Day</td>
<td></td>
</tr>
<tr>
<td>BTSP-SA SW</td>
<td>Security Analytics, BlueTouch Partner Software Support, Level 3</td>
<td>19%</td>
<td>8% Product Support</td>
<td>Product</td>
</tr>
</tbody>
</table>
# SYMANTEC MASTER PURCHASE AGREEMENT

<table>
<thead>
<tr>
<th>Customer Company Name:</th>
<th>Contact Name:</th>
<th>Email:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Address:</td>
<td>(All fields are required)</td>
</tr>
<tr>
<td>Customer Company Address:</td>
<td>City, State</td>
<td>Zip/Postal Code:</td>
</tr>
<tr>
<td></td>
<td>Country:</td>
<td></td>
</tr>
<tr>
<td>Effective Date of this Agreement: (To be filled in by Symantec upon signature)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This Symantec Master Purchase Agreement ("Agreement") is entered into by and between Symantec, as defined below ("Symantec") and the customer named above ("Customer"), each a "Party" and together the "Parties", as of the date indicated above ("Effective Date"), and sets out the terms and conditions for the use of certain Symantec products and services.

Symantec and Customer agree as follows:

## 1.0 DEFINITIONS

- **Capitalized terms shall have the meanings set forth below.**

  1.1 **Addendum** means any addendum attached to this Agreement which further sets out the terms and conditions for each specific type of Symantec Solution.

  1.2 **Affiliates** means an entity controlled by, under common control with, or controlling a Party, where control is denoted by having (directly or indirectly) more than fifty percent (50%) of the voting power (or equivalent) of the applicable entity.

  1.3 **Customer Content** means any information provided by Customer to use Symantec Solutions, including, but not limited to, Personal Information and Network Data.

  1.4 **Network Data** means data that Symantec receives in order to configure the Symantec Solutions and/or to provide the Symantec Solutions, which may include Personal Information, including but not limited to time of transaction, User IP address, username, URL, URL category, status (success or error), file type, filter result (allowed or denied), virus ID, and other metadata (e.g. browser software used), and any other network traffic (and data related thereto) sent to or received from Customer through use of Symantec Solutions, in detail and/or in an aggregated form.

  1.5 **Personal Information** means any personal data as defined by applicable data protection laws, provided to Symantec by Customer, or collected by Symantec from Customer, in connection with Symantec's provision and Customer's use of Symantec Solutions. Personal Information may include, without limitation, names, e-mail addresses, IP addresses and contact details of Customer's designated users and contacts, any service call data, and log data that may include destination IP addresses or user names. Personal Information does not include anonymous data.

  1.6 **Solution Document(s)** means, unless otherwise defined, the documentation, descriptions, user manuals and release notes associated with the Symantec Solutions.

  1.7 **Symantec Solution(s)** means the commercially available products and services made available by Symantec for license or purchase under this Agreement, as specified in each applicable Addendum.

  1.8 **Term** means the term of this Agreement as set forth in Section 3.1.

## 2.0 AFFILIATES

Customer agrees that it will remain responsible for any acts or omissions by Customer's Affiliates who purchase Symantec Solution(s) under the terms of this Agreement. Alternatively, Customer’s Affiliate may purchase Symantec Solution(s) in its own name by executing a participation addendum, a purchase schedule or such other document, and by adopting and agreeing to the terms of this Agreement and any applicable Addendum as if Customer’s Affiliate were a party to this Agreement. For each Customer Affiliate, the Agreement and any applicable Addendum taken together constitute a separate agreement between Symantec and Customer’s Affiliate governing acquisition and use of Symantec Solution(s) by such Customer Affiliate.

## 3.0 TERM; TERMINATION

3.1 The Term of this Agreement shall be for one (1) year, which shall automatically renew unless either Party gives ninety (90) days' notice of non-renewal before the end of the current annual term. Any individual Addendum will begin on the specified Effective Date and continue until terminated as further specified below. The term for any specific Symantec Solution provided under this Agreement and the applicable Addendum will be as set forth in such Addendum.

3.2 This Agreement or any individual Addendum, in whole or in part, may be terminated at any time by either Party: (i) upon written notice if the other Party breaches any material term of this Agreement and/or an Addendum, and such breach remains uncorrected for thirty (30) days following written notice; or (ii) immediately, if the other Party becomes the subject of a voluntary or involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or similar action for the benefit of creditors as a consequence of debt, or if the other Party otherwise ceases or threatens to cease business.

3.3 Effect of Termination.

(a) Upon termination of any Addendum, this Agreement and all other Addenda will continue in full force and effect. Upon termination of this Agreement in whole, all Addenda under this Agreement will be terminated immediately.

(b) Termination of this Agreement, or any individual Addendum, in whole or in part, will not affect any rights or obligations accrued up to the date of termination. Symantec is entitled to invoice and be paid for all Symantec Solutions provided up to the effective date of termination and/or any non-cancellable fees, as applicable, and all invoices become immediately then due and payable.
4.0 FEES; PAYMENT; TAXES; DELIVERY. THIS SECTION 4.0 SHALL APPLY ONLY IN THE EVENT THAT SYMANTEC ACCEPTS CUSTOMER’S ORDERS DIRECTLY. If Customer orders from a Symantec reseller (“Reseller”), then all provisions related to fees, payment, taxes and delivery shall be as agreed between Customer and Reseller. Symantec will not be liable for any agreement between Customer and Reseller for any other account administration on Customer’s behalf.

4.1 Fees and Payment. Customer will pay Symantec the fees agreed to by the Parties, in the currency defined on the invoice, (“Fees”) within thirty (30) days from the date of invoice, except as may be otherwise approved by Symantec in writing on a case by case basis. Customer’s order may contain Symantec Solutions that are invoiced upon order or invoiced in arrears. If any sum payable to Symantec is not paid by the due date, Symantec reserves the right, without prejudice to any other remedy, to (i) charge interest on such overdue sum on a day to day basis from the due date until paid in full at the lesser of one percent (1%) per month or the maximum rate permitted by applicable law; and/or (ii) suspend the provision of the Symantec Solutions upon five (5) days prior notice, until paid in full. Except as expressly provided in this Agreement or the applicable Addendum, payment obligations are non-cancellable and any sums when paid shall be non-refundable.

4.2 Taxes. Customer is responsible for all taxes, customs duties, import fees or other similar charges, and all other mandatory payments imposed by government entities with respect to the Symantec Solutions or other items provided under this Agreement, excluding tax imposed on Symantec’s net income and withholding taxes (subject to the condition of providing withholding tax payment receipts, as set forth below). Symantec will bill applicable taxes as a separate item. If a transaction is exempt from tax, Customer will provide Symantec with a valid exemption certificate or other evidence of such exemption in a form acceptable to Symantec. If Customer is required by law to withhold any tax from the payment, Customer will provide Symantec with original or certified copies of all tax payment receipts or other evidence of payment of taxes by Customer with respect to transactions under this Agreement. If Customer fails to provide Symantec with such tax payment receipts, if applicable, then Customer will reimburse Symantec for any fines, penalties, taxes and other governmental agency charges resulting from such failure.

4.3 Shipment. Shipment of all tangible items shall be Ex Works (EXW), Symantec’s shipping point – Incoterms® 2010. For any tangible Symantec Solution(s), title passes to Customer when such items are made available to the carrier at Symantec’s shipping point.

5.0 INTELLECTUAL PROPERTY OWNERSHIP. Each Symantec Solution is the proprietary property of Symantec and/or its licensors and is protected by patent, trademark, copyright, and other intellectual property laws. Symantec and its licensors retain any and all rights, title and interest in and to the Symantec Solution, including in all copies, improvements, enhancements, modifications and derivative works of the Symantec Solution. Customer’s rights to use the Symantec Solution shall be limited to those expressly granted in this Agreement and/or the applicable Addendum. All rights not expressly granted to Customer are retained by Symantec and/or its licensors.

6.0 INTELLECTUAL PROPERTY CLAIMS. Symantec will defend Customer against any claims asserting that the Symantec Solutions infringe any intellectual property right of a third party, and will pay any and all damages finally awarded by a court and actually paid by Customer, or agreed to in a final settlement by Symantec and attributable to such claim. Symantec’s obligations under this provision are subject to Customer not having compromised or settled such claim and doing the following: (a) notifying Symantec of the claim in writing, as soon as Customer learns of it; (b) providing Symantec with all reasonable assistance and information to enable Symantec to perform Symantec’s duties under this Section; and (c) allowing Symantec sole control of the defense and all related settlement negotiations. Notwithstanding the foregoing, Customer may participate at Customer’s expense in the defense of any such claim with Customer’s own counsel, provided that Symantec retains sole control of the claim. Customer has the right to approve any settlement that affirmatively places on Customer an obligation that has a material adverse effect on Customer other than the obligations to cease using the affected Symantec Solution or to pay sums indemnified under this Section. Such approval will not be unreasonably withheld. If the Symantec Solutions are found to infringe, or if Symantec determines in Symantec’s sole opinion that the Symantec Solutions are likely to be found to infringe, then Symantec will either (i) obtain for Customer the right to continue to use the Symantec Solutions; or (ii) modify the Symantec Solutions so as to make it non-infringing, or replace it with a non-infringing equivalent substantially comparable in functionality; or, if Symantec determines in its sole opinion that “(i)” and/or “(ii)” are not reasonable, Symantec may (iii) terminate Customer’s rights and Symantec’s obligations under this Agreement and/or the applicable Addendum, and in such case shall refund any unpaid, pre-paid fees to Customer for the affected Symantec Solutions. Notwithstanding the above, Symantec will not be liable for any infringement claim to the extent that it is based upon: (A) modification of the Symantec Solutions other than by Symantec; (B) combination, use, or operation of the Symantec Solutions with products not specifically authorized by Symantec to be combined with the Symantec Solutions; (C) use of the Symantec Solutions other than in accordance with this Agreement or the applicable Addendum; or (D) Customer’s continued use of infringing Symantec Solutions after Symantec, for no additional charge, supplies or offers to supply modified or replacement non-infringing Symantec Solutions. THIS SECTION “INDEMNITY” STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND SYMANTEC’S SOLE AND EXCLUSIVE LIABILITY REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY.

7.0 CONFIDENTIALITY. “Confidential Information” means, for purposes of this Agreement, the non-public information provided by a Party (“Discloser”) to the other Party (“Recipient”) related to the business opportunities between the Parties, provided that such information is: (a) identified or marked as confidential at the time of disclosure by the Discloser, or (b) if the initial disclosure is not in written or other tangible form, the Confidential Information will be so identified at the time of disclosure and reduced to written or other tangible form, appropriately marked and submitted by the Discloser to the Recipient as soon as reasonably practicable thereafter, but no later than thirty (30) days after disclosure. Confidential Information of Symantec shall include product architecture, product research and development plans, non-public financial data and roadmaps, whether marked as confidential or not. The Recipient may use the Confidential Information that it receives from the Discloser solely for the purposes of the activities contemplated under this Agreement for a period of five (5) years following the applicable date of disclosure of any Confidential Information, the Recipient will not disclose the Confidential Information to any third party. The Recipient will protect it by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to its Affiliates, agents and subcontractors with a need to know in order to fulfill the purpose of this Agreement, under a nondisclosure agreement at least as protective of the Discloser’s rights as this Agreement. This Section imposes no obligation upon the Recipient with respect to Confidential Information which: (i) is or becomes public knowledge other than as a result of Customer’s disclosure; (ii) was in the Recipient’s possession before receipt from the Discloser and was not subject to a duty of confidentiality; (iii) is rightfully received by the Recipient without any duty of confidentiality; (iv) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (v) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser’s Confidential Information as required by law or court order provided: (x) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure, if legally permissible; and (y) discloses only as much of the Confidential Information as is required. Upon request from the Discloser or upon termination of the Agreement, the Recipient will aim to return all Confidential Information and all copies, notes, summaries, or extracts thereof or certify destruction of the same.
Each Party will retain all right, title and interest to such Party’s Confidential Information. The Parties acknowledge that a violation by the Recipient of its obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. In addition to any and all remedies available at law, the Discloser will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions.

8.0 USE AND PROTECTION OF CUSTOMER CONTENT; DATA PROTECTION.

To the extent that Symantec processes any Personal Information in accordance with Customer’s use, and Symantec’s provision, of Symantec Solution(s), Symantec shall process Personal Information in accordance with Customer’s instructions and as more fully set forth in this Agreement and in the Solution Documents, as may be further defined in each addendum. By using the Symantec Solution(s), Customer consents and instructs Symantec to process Personal Information for the following purposes: (i) to enable, optimize and provide the Symantec Solutions; (ii) to administer and enforce Symantec’s agreement with Customer; (iii) to improve and/or enhance Symantec’s products and services, including without limitation, for security research and development or threat detection, and security reporting purposes; (iv) to generate statistical reports and analysis about use of the Symantec Solutions (including analyses related to security trends and data patterns, and comparisons in Symantec’s aggregated install base) (collectively “Reports”); (v) for internal research and development (e.g., improving Symantec’s products and services or the detection of malware); (vi) for providing general security related services or research; (vii) as provided in the applicable Solution Documents; and/or (viii) to comply with legal, by applicable law, regulation or judicial process.

Customer shall be solely responsible for providing end user notices and/or obtaining consents related to, e.g., the monitoring, inspection, decryption, and/or re-encryption of data and procuring permits, registrations or licenses necessary for Symantec to process Personal Information under the Agreement. Customer consents for Symantec to transfer Personal Information in order to facilitate the provision of the Symantec Solutions, to the United States or other countries that may have different data protection laws than the region in which Customer is located and that such Personal Information may be accessed by Symantec employees, contractors, partners and vendors for the purposes described above.

Where transfers of Personal Information are made from the European Economic Area to outside the European Economic Area, Symantec agrees to execute Standard Contractual Clauses upon Customer’s request. Symantec will maintain appropriate administrative, technical, organizational, and physical safeguards for the Symantec Network as defined below designed to (i) protect the security and integrity of the Symantec Network, and (ii) protect against accidental, unauthorized, or unlawful access, use, alteration or disclosure of, loss, destruction or damage to, or any other unlawful form of processing of Customer Content. The “Symantec Network” means Symantec’s data center facilities, servers, and networking equipment/software involved in hosting Customer Content that is under Symantec’s reasonable control and are used to provide Symantec Solution(s). Symantec’s security standards will be substantially equivalent to the generally accepted security standards in the IT industry for Symantec Solution(s). Symantec will conform to the security standards during the term of this Agreement.

Customer acknowledges and agrees that Symantec Affiliates and other non-affiliated third party providers may be retained as sub-processors worldwide (“Sub-Processors”) to fulfill its contractual obligations under this Agreement or to provide certain services on its behalf and that they will therefore process Personal Information. Where Symantec authorizes any Sub-Processor as described in this Section, Symantec will restrict the Sub-Processor’s access to Personal Information only to what is necessary to maintain Symantec Solution(s) or to provide Symantec Solution(s) to Customer in accordance with the Agreement and Symantec will prohibit the Sub-Processor from accessing Personal Information for any other purposes; and Symantec will impose appropriate contractual obligations in writing upon the Sub-Processor that are no less protective than this Agreement; and Symantec shall be liable for the acts and omissions of its Sub-Processors to the same extent Symantec would be liable if performing the services of each Sub-Processor directly under the Agreement. Symantec shall make available to Customer a list of Sub-Processors for the ordered Symantec Solution, which list may be updated from time to time on the applicable Symantec Solution product web page on www.symantec.com.

9.0 DISCLAIMER OF WARRANTIES

Symantec warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Symantec’s published policy. NONSYMANTEC BRANDED SERVICES ARE SOLD UNDER THE AGREEMENT “AS-IS”, WITHOUT WARRANTIES OF ANY KIND.

IN THE EVENT THAT CUSTOMER TESTS THE BETA VERSION OF A SYMANTEC SOLUTION, CUSTOMER ACKNOWLEDGES THAT THE BETA VERSION IS UNTESTED, PRELIMINARY IN FORM AND/OR IN A TEST ENVIRONMENT. THE BETA VERSION IS PROVIDED “AS IS” WITH NO WARRANTIES OR REPRESENTATIONS WHATSOEVER. THE TERMS OF THE SERVICE LEVEL (IF ANY) SHALL NOT APPLY TO ANY BETA VERSION.

10.0 LIMITATION OF LIABILITY.

10.1 Nothing in this Agreement shall exclude or limit: (i) Either Party’s liability for death or personal injury caused by its negligence; (ii) any liability which cannot be excluded by law; (iii) Symantec’s obligations related to IP infringement indemnification; (iv) any fraud or fraudulent pre-contractual misrepresentations made by Symantec on which Customer can be shown to have relied; or (v) Customer’s obligations related to indemnification. FURTHER, THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 52.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

10.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMedy SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SYMANTEC OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES; OR (II) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, ANTICIPATED SAVINGS, WASTED MANAGEMENT AND STAFF TIME; WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT OR USE OF THE SYMANTEC SOLUTIONS, EVEN IF SYMANTEC OR ITS SUPPLIERS HAVE BEEN ADVISED SUCH DAMAGES OR LOSSES MIGHT OCCUR.
10.3 SUBJECT TO SECTIONS 10.1 AND 10.2, TO THE EXTENT PERMITTED BY APPLICABLE LAW, SYMANTEC’S OR SYMANTEC’S SUPPLIERS’ TOTAL LIABILITY FOR EACH CLAIM ARISING UNDER THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO THE TOTAL CONTRACT PRICE. THE EXCLUSIONS AND LIMITATIONS SET FORTH ABOVE WILL APPLY REGARDLESS OF WHETHER OR NOT CUSTOMER ACCEPTS SYMANTEC SOLUTIONS.

CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, LIABILITIES, SUITS, PROCEEDINGS, COSTS, AND EXPENSES INCLUDING REasonABLE LEGAL EXPENSES AND FEES ARISING OUT OF, RESULTING FROM OR RELATING TO: (1) THE UNAUTHORIZED OR UNLAWFUL USE OF THE SYMANTEC SOLUTIONS BY CUSTOMER OR BY THIRD PARTIES; (2) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, OR RECEIVED WHILE USING SYMANTEC SOLUTIONS; OR (3) USE OR LOSS OF CUSTOMER’S SOFTWARE, FIRMWARE, INFORMATION OR MEMORY DATA CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY SYMANTEC SOLUTION RETURNED TO SYMANTEC UNDER WARRANTY OR OTHERWISE.

11.0 U.S. GOVERNMENT RESTRICTED RIGHTS. This Section 11.0 applies only to U.S. Government entities. Symantec Solutions are deemed to be commercial computer software for purposes of FAR 12.212 and DFAR Section 227.7202. Any use, modification, reproduction release, performance, display or disclosure of any Symantec Solution by the U.S. Government shall be solely in accordance with the terms of this Agreement, and except as otherwise explicitly stated in this Agreement all provisions of this Agreement shall apply to the U.S. Government.

12.0 EVALUATION. If any Symantec Solution is provided to Customer for evaluation purposes, and is not accompanied by terms and conditions, the terms and conditions of this section shall apply. Symantec grants to Customer a nonexclusive, temporary, royalty-free, non-assignable license to use the Symantec Solution solely for internal, non-production evaluation subject to the applicable Solution Documents. Such evaluation license shall terminate (a) on the end date of the pre-determined evaluation period, if an evaluation period is predetermined or (b) thirty (30) days from the date of Customer’s initial use or installation of the Symantec Solution, if no such evaluation period is pre-determined (“Evaluation Period”). THE SYMANTEC SOLUTION MAY NOT BE TRANSFERRED AND IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. THE APPLICABLE SOLUTION DOCUMENTS FOR THE SYMANTEC SOLUTION ARE PROVIDED FOR THE PURPOSE OF DESCRIBING THE SYMANTEC SOLUTION, SYMANTEC HEREBY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, SERVICE LEVEL COMMITMENTS OR OTHER SYMANTEC COMMITMENTS, OBLIGATIONS, OR LIABILITIES, IN SUCH SOLUTION DOCUMENTS. All other terms and conditions of this Agreement shall otherwise apply to Customer’s evaluation of the Symantec Solution. Customer is solely responsible to take appropriate measures to back up Customer’s system and take other measures to prevent any loss of files or data. Symantec will not return any data to Customer upon expiration or termination of Evaluation Period. The Symantec Solution may contain an automatic disabling mechanism that prevents its use after a certain period of time. Upon expiration of the Evaluation Period, Customer will cease use of the Symantec Solution and, if installed, destroy all copies of such installed instances.

13.0 GENERAL.

13.1 Symantec is an independent contractor and shall not be deemed Customer’s employee or agent.

13.2 Symantec has the right to subcontract the performance of the Symantec Solutions to third parties, provided that Symantec remains responsible for the contractual obligations according to this Agreement, including any applicable Addendum.

13.3 All notices of breach, termination, or the like will be in writing and addressed to the receiving Party's current business contact, if known, with a cc: to the General Counsel/Legal Department of the receiving Party and sent to the party’s address as stated in this Agreement, or as updated by either Party in writing. Notices shall be effective upon receipt and shall be deemed received as follows: (a) if personally delivered by courier, when delivered, or (b) if mailed by first class mail, or the local equivalent, on the fifth business day after posting with the proper address.

13.4 Customer may not assign the rights granted under this Agreement and any Addendum, in whole or in part and whether by operation of contract, law or otherwise, without Symantec’s prior written consent. Such consent will not be unreasonably withheld or delayed.

13.5 Force Majeure: Excusable delays shall be governed by FAR 52.212-4(f).

13.6 If Customer is located in North America or Latin America, this Agreement will be governed by the laws of the State of California, United States of America. If Customer is located in China, this Agreement will be governed by the laws of the Peoples Republic of China with jurisdiction in the People’s Republic of China where Symantec Beijing is registered. If Customer is located in Japan, this Agreement will be governed by the laws of Japan, with jurisdiction in the court of Japan, Tokyo District Court. If Customer is otherwise located in Asia Pacific, this Agreement is governed by the laws of Singapore, with jurisdiction in Singapore. If Customer is located in Europe, this Agreement shall be governed by the laws of England and Wales and the Parties agree to be subject to the jurisdiction of the English courts. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any applicable amendments, and without regard to principles of conflicts of law.

13.7 If any provision of this Agreement, or any applicable Addendum, is found partly or wholly illegal or unenforceable, such provision will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions will remain in full force and effect. A waiver of any breach or default under this Agreement, or any applicable Addendum, will not constitute a waiver of any other right for subsequent breach or default. No person or entity other than a party to this Agreement will be entitled to enforce any term of it except as expressly provided in this Agreement.

13.8 The export, re-export, or in-country transfer of the Symantec Solutions and related technical data and services (collectively “Controlled Technology”) is subject to the export laws and regulations of the U.S. and other jurisdictions including, but not limited to, the U.S. Export Administration Regulations, European Union Council Regulations, and Singapore Strategic Goods Control Act. The export or re-export of Controlled Technology in violation of the foregoing laws and regulations is strictly prohibited. Controlled Technology may also be subject to import, distribution, transfer or use restrictions requiring that Customer act prior to download or use of the Controlled Technology. Controlled Technology is prohibited for export or re-export to Cuba, North Korea, Iran, Syria, Sudan, the Crimea Region of Ukraine, and to any other country or region subject to trade sanctions. Customer may not export any Controlled Technology related to the use or development of missiles or chemical, biological, and/or nuclear weapons. Furthermore, Customer may not export any Controlled Technology to any military entity, or to any other entity for any military purpose, unless subject to a valid license specifically permitting such export. Customer represents that Customer is neither located in, nor a resident or national of, any prohibited country or region. Customer further represents that it is not a sanctioned person or entity named on a U.S. or other government list (including, but not limited to, lists published by the U.S. Bureau of Industry and Security, U.S. Directorate of Defense Trade Controls, U.S. Office of Foreign Assets Control, European Union, and United Nations). Customer shall not, directly or indirectly, facilitate giving a sanctioned country or entity access to Controlled Technology. Customer represents and warrants to Symantec that it will comply with Title 15 of the US Code of Federal Regulations Subchapter C Part 762 and other applicable record keeping regulations of the U.S. and other jurisdictions (the “Record Keeping Requirements”) related to or arising from the subject matter of this Agreement. Upon ten (10) business days’ notice, or as soon as practicable if required sooner by a
government or regulatory official request, Customer shall provide Symantec with electronic copies (unless in a format as otherwise agreed by the parties) of all relevant records required to be retained by Customer pursuant to the Record Keeping Requirements.

13.9 Notwithstanding the foregoing, Symantec may revise the Symantec Solution(s) and/or the Solution Documents at any time for the following reasons: (a) it becomes necessary due to applicable laws or industry standards, including, without limitation, any change of the foregoing; (b) it becomes necessary for technological reasons when any change is made without materially degrading the Symantec Solution(s) functionality(ies); (c) it becomes necessary to maintain the operation of the Symantec Solution(s) when any change is made without materially degrading the Symantec Solution(s) functionality(ies); or (iv) changes are in Customer’s favor.

13.10 The terms of this Agreement and each applicable Addendum are the complete and exclusive agreement between the Parties with respect to the subject matter of this Agreement and each applicable Addendum, and supersede any previous or contemporaneous agreement, proposal, commitment, representation, or other communication whether oral or written between the Parties regarding such subject matter. This Agreement and each applicable Addendum prevail over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Customer, even if signed and returned. If this Agreement or any applicable Addendum is translated in any language other than the English language, then in the event of a conflict between the English language version and the translated version, the English language version shall prevail in all respects.

13.11 Facsimile signatures and signed facsimile copies of this Agreement (and any of its addenda, attachments and exhibits if any), shall legally bind the Parties to the same extent as originals.

13.12 This Agreement and the Addenda may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the Parties. The signatories to this Agreement or any Addendum represent that they are duly authorized to sign this Agreement on behalf of their respective companies.

<table>
<thead>
<tr>
<th>Symantec Corporation</th>
<th>Symantec Ltd.</th>
<th>Symantec Asia Pacific Pte Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>350 Ellis Street</td>
<td>Ballycoolin Business Park</td>
<td>6 Temasek Boulevard, #12-01</td>
</tr>
<tr>
<td>Mountain View, CA 94043 USA</td>
<td>Blanchardstown, Dublin 15</td>
<td>Suntec Tower 4, Singapore 038986</td>
</tr>
<tr>
<td>Symantec Japan, Inc.</td>
<td>Symantec Software (Beijing) Co., Ltd.</td>
<td></td>
</tr>
<tr>
<td>Akasaka InterCity, 1-11-44 Akasaka, Minato, Tokyo 107-0052 Japan</td>
<td>Room 1101, Tower E3, Oriental Plaza, Beijing, 100738, China</td>
<td></td>
</tr>
</tbody>
</table>

Signature:

Printed Name & Title:

Date Signed:

<table>
<thead>
<tr>
<th>Customer Signature</th>
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<tbody>
<tr>
<td>Customer (Company Name):</td>
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</table>

Signature:

Printed Name & Title:

Date Signed:
### SYMANTEC ONLINE SERVICES TERMS AND CONDITIONS ADDENDUM

<table>
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<tr>
<th>Customer Company Name:</th>
<th>Contact Name:</th>
<th>Email:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Company Address:</td>
<td>Address:</td>
<td>(All fields are required) City, State: Zip/Postal Code:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effective Date of this Addendum:</th>
<th>(To be filled in by Symantec upon signature)</th>
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<tr>
<th>Symantec Master Purchase Agreement:</th>
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<table>
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<tr>
<th>Effective Date of the Symantec Master Purchase Agreement:</th>
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These SYMANTEC ONLINE SERVICES TERMS AND CONDITIONS (the “Addendum”) are entered into as of the Effective Date of the Addendum, and are made by and between Symantec and Customer. The “Agreement” is the combination of this Addendum and the Symantec Master Purchase Agreement referenced above (the “Master Agreement”). The Service Description for each applicable Online Service, are incorporated into and form a part of this Addendum. In the event of a conflict, the following order of precedence applies: this Addendum, the Master Agreement, and the Service Description.

The Parties agree as follows:

#### 1.0 DEFINITIONS

Capitalized terms shall have the meanings set forth below. Capitalized terms not defined in this Addendum shall have the meaning set forth in the Master Agreement.

1.1 “Meter” means the applicable unit(s) of measurement by which Symantec prices and sells a Subscription to an Online Service, in effect at the time of the Order Confirmation.

1.2 “Order Confirmation” means a confirmation that Symantec sends to Customer to confirm a purchase of the applicable Online Services, as well as Subscription Term, whether ordered directly from Symantec or through a Symantec authorized reseller.

1.3 “Online Service” means any Symantec branded solution delivered over the Internet and/or hosted or managed by Symantec and made available via a network, including any Service Component(s).

1.4 “Service Component(s)” which means certain enabling software, accessories and associated documentation which may be separately provided by Symantec as an incidental part of an Online Service.

1.5 “Service Description” means Symantec’s published description of an Online Service’s features, including, but not limited to, any service-specific additional terms and requirements, and any accompanying service level agreements (“SLA”).

1.6 “Subscription” means, for purposes of the Agreement, a fixed term right to access, use and/or benefit from an Online Service as defined in each Order Confirmation.

1.7 “Subscription Term” means the period of time for which a Subscription is valid, as defined in each Order Confirmation.

#### 2.0 SUBSCRIPTION AND ONLINE SERVICES RIGHTS GRANTED

Symantec grants Customer the right to use the Online Services, under the Agreement, in the Meter amount ordered and for the Subscription Term, within the use limitations shown in the applicable Service Descriptions. Any guidelines for eligibility to purchase Online Services may be outlined in a separately published guide.

#### 3.0 USE OF ONLINE SERVICES

3.1 Initial Account and Service Set-Up. Customer must provide Symantec with all reasonably necessary Customer Content to allow Symantec to provision and deliver each Online Service.

3.2 Acceptable Use of Online Services. Customer may use the Online Services (i) for Customer’s internal business purpose, (ii) up to the Meter amount for which Customer has purchased a Subscription, (iii) only for lawful business purposes, and (iv) in accordance with any acceptable use policy published by Symantec and the applicable Service Description. If Customer does not comply with these requirements, Symantec reserves the right to immediately suspend all or part of the Online Services during such non-compliance, without compensation to Customer of any kind.

3.3 Customer Configurations. The Online Services do not include Customer’s configurations, nor policies and procedures implemented and set by Customer that are available through the Online Services. Customer acknowledges and agrees that Customer is solely responsible for selecting Customer’s configurations and ensuring that the selection conforms to Customer’s policies and procedures and complies with all applicable laws and regulations in jurisdictions in which Customer is accessing the Online Services.

3.4 Changes to Subscription Meter Amounts. For Subscriptions that are invoiced in arrears, Customer can change Customer’s Subscription Meter amount at any time by submitting an order for additional Online Services. If Customer’s current use of an Online Service exceeds the Meter amount shown on Customer’s applicable Order Confirmation(s), then Customer must promptly submit a new order for the additional use, which will be invoiced at the GSA price list rates, or as mutually agreed upon by the Parties, through the current Subscription Term, and Customer’s aggregate Meter amount will be the basis for any renewal of the Subscription. Symantec reserves the right to invoice Customer for any additional use, at the then-current rates, if a corresponding order is not promptly received.

#### 4.0 SUBSCRIPTION TERM; AUTOMATIC RENEWAL

4.1 Subscription Term and Automatic Renewal Option. The Subscription Term will start on the date indicated on the Order Confirmation. If Customer elects automatic renewal for the Online Service, as indicated by Customer’s Order Confirmation, then Customer’s account will be invoiced without further action by

Customer on the renewal date for the aggregate Meter amount at the end of the previous Subscription Term. If Customer does not elect automatic renewal, then Customer must contact Symantec or Customer’s reseller prior to the expiration of Customer’s current Subscription Term to continue to access the Online Services beyond the end of the Subscription Term.
4.2 Automatic Renewal Opt Out. For Subscriptions that automatically renew, Customer may opt out of the automatic renewal option at any time by contacting Customer’s reseller or by contacting Symantec at customercare@symantec.com. In the event that Symantec ceases to offer automatic renewal for specific Online Services, Symantec will provide notification to Customer’s then-current business or technical contact, and/or by publication on the applicable administrator portal for the Online Service(s).

4.3 Pay for Use Option. Notwithstanding (a) and (b) above, for Online Services that offer a pay for use option, as specified in the Service Description or applicable program guide, Customer’s invoices will be based upon Customer’s actual usage in the preceding month with or without an upfront commitment. Customer will continue to be invoiced so long as Customer continues to use the Online Services.

5.0 TERMINATION OF ONLINE SERVICES

5.1 Right to Termination. If Customer has chosen the automatic renewal option for Customer’s Subscriptions, then Customer may cancel automatic renewal at any time. For Subscriptions that are paid in advance or for Subscription Terms of twelve (12) months or longer, such Subscriptions are non-cancellable and payments for such Subscriptions are non-refundable. For Subscriptions paid in arrears, with a Subscription Term of no more than thirty (30) days, either Party may cancel orders for such Subscriptions upon thirty (30) days’ written notice before the end of Customer’s next billing cycle. Subscriptions may be terminated by either Party if the other Party breaches any material term of the Agreement and such breach remains uncorrected for thirty (30) days following written notice; or immediately, if the other Party becomes the subject of a voluntary or involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or similar action for the benefit of creditors as a consequence of debt, or if the other Party otherwise ceases or threatens to cease business.

5.2 Effect of Termination. Upon termination of an individual Subscription, all other Online Services specified in the Order Confirmation will continue.

6.0 PRICING; INVOICES.

THIS SECTION SHALL APPLY IN ADDITION TO SECTION 4.1 OF THE MASTER AGREEMENT AND ONLY IN THE EVENT THAT SYMANTEC ACCEPTS CUSTOMER’S ORDERS DIRECTLY.

6.1 Pricing. Symantec reserves the right to change its pricing at any time. Symantec may change its pricing for an Online Service by publishing, or quoting Customer for the updated pricing.

6.2 Invoices. Symantec reserves the right to invoice immediately upon acceptance of an Online Service(s) order. If Customer requires a purchase order document (“PO”) in order for Symantec to process Customer’s payment of an invoice, then such PO must include sufficient detail to allow Symantec to accept and accurately fulfill Customer’s order. Depending on the Online Service Subscription model Customer selects, Symantec will either (a) invoice Customer for the Online Services in advance, or (b) invoice Customer in arrears. Such invoicing schedule will be defined in the Order Confirmation. Symantec reserves the right to begin invoicing Customer, even if Symantec cannot provide the Online Services due to Customer’s act or omission or failure to provide required information. Payment will be due 30 days after receipt of the invoice.

7.0 LIMITED WARRANTY. Symantec warrants that it provides Online Services using reasonable care and skill in accordance with the corresponding Services Description and within the industry standards. The warranty for an Online Service ends when the Online Service ends.

Symantec Signature

<table>
<thead>
<tr>
<th>Symantec Corporation</th>
<th>Symantec Ltd.</th>
<th>Symantec Asia Pacific Pte Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>350 Ellis Street</td>
<td>Ballycoolin Business Park</td>
<td>6 Temasek Boulevard, #12-01</td>
</tr>
<tr>
<td>Mountain View, CA 94043 USA</td>
<td>Blanchardstown, Dublin 15 Ireland</td>
<td>Suntec Tower 4, Singapore 038986</td>
</tr>
</tbody>
</table>

Signature:

Printed Name & Title:

Date Signed:

Customer Signature

Customer (Company Name):

Signature:

Printed Name & Title:
2.0 TERM AND TERMINATION FOR LICENSE AND MAINTENANCE.

1.0 DEFINITIONS.

These SYMANTEC SOFTWARE TERMS AND CONDITIONS (the “Addendum”) are entered into as of the Effective Date of the Addendum, and are made by and between Symantec and Customer. The “Agreement” is this combination of this Addendum and the Master Purchase Agreement referenced above (the “Master Agreement”). For the purposes of this Addendum, the “Agreement” includes these terms and conditions, as well as the specific Product Use Rights for each Licensed Software. In the event of a conflict, the following order of precedence applies: this Addendum, the Master Agreement, and the Product Use Rights.

1.1 “Content Updates” means content, which may be provided from time to time, used by certain Symantec products and/or services to maintain the efficacy of the product, including but not limited to: updated antispamware definitions for anti-spyware products; updated antispam rules for antispam products; updated virus definitions for antivirus and crimeware products; updated URL lists for content filtering and antiphishing products; updated firewall rules for firewall products; updated intrusion detection data for intrusion detection products; updated lists of authenticated web pages for website authentication products; updated policy compliance rules for policy compliance products; and updated vulnerability signatures for vulnerability assessment products. Content Updates may include content produced by the Licensed Software based on Customer’s use of the Licensed Software.

1.2 “Hardware” means a physical device sold to or leased to Customer by Symantec, which may be delivered with or separately from the other components of Licensed Software.

1.3 “Licensed Software” means the Symantec software product, in object code form, licensed under the Agreement, including any Software Documentation included in, or provided for use with, such software and Product Updates/Upgrades made available under Maintenance.

1.4 “Maintenance” or “Maintenance/Support” means the delivery of Product Updates/Upgrades and Content Updates to the Licensed Software, and may include access to technical support as defined in the applicable Maintenance documentation.

1.5 “Entitlement Confirmation” means one or more of the following applicable documents which further defines Customer’s license rights to the Licensed Software and Customer’s access to Maintenance: a Symantec license or maintenance certificate or a similar confirmation document issued by Symantec; or a written agreement between Customer and Symantec; or validation through an entitlement portal; or an authorized Symantec email confirmation; or an order confirmation receipt, that accompanies, precedes or follows the Agreement.

1.6 “Product Updates/Upgrades” or “Update” means any generally available update to the Licensed Software, including, but not limited to, an enhancement, fix or patch, Version Upgrades, Cross-Grades, and Content Updates delivered under Maintenance. “Version Upgrade” means any generally available version of the Licensed Software, which replaces the prior version of the Licensed Software pursuant to Symantec’s then current upgrade policies. “Cross-Grade” means choosing to replace the Licensed Software with a different Licensed Software title by exercising an option during Customer’s Maintenance term (i.e. to increase its functionality, and/or transfer it to a new operating system, hardware tier, or licensing meter).

1.7 “Product Use Rights” means usage rights, restrictions and terms specific to the Licensed Software.

1.8 “Software Documentation” means the user documentation, user manual, and release notes provided for the Licensed Software. Software Documentation may be delivered in a text file, printed form or published on a product Web page.

1.9 “Use Level” means a quantity of licensed uses of the Licensed Software based on the license use meter and model (which may include operating system, hardware system, application or machine tier limitations, if applicable) by which Symantec measures, prices and licenses the right to use the Licensed Software and/or to access Maintenance. License use meter and model options are defined in the Product Use Rights Supplement. Use Level and applicable use meter or model is indicated in the applicable Entitlement Confirmation. Use Level applies to the corresponding Maintenance that Customer purchased for use with the Licensed Software.

2.0 TERM AND TERMINATION FOR LICENSE AND MAINTENANCE. The term of the licenses granted under the Agreement shall be perpetual unless stated otherwise in the Product Use Rights Supplement or unless Customer has obtained the Licensed Software on a limited-term or a subscription basis, in which case, Customer’s rights to use such Licensed Software and any access to Maintenance shall end on the date indicated on the applicable
5.0 PRODUCT USE RIGHTS SUPPLEMENT. The Agreement does not create any right for Customer to use or access the Commercial Third Party Applicat

3.0 THIRD PARTY PROGRAMS. SYMANTEC MAKES NO WARRANTIES AND ASSUMES NO LIABILITY WITH RESPECT TO ANY THIRD PARTY PROGRAMS OR COMMERCIAL THIRD PARTY APPLICATIONS.

4.0 LICENSE GRANT. Subject to Customer’s compliance with the Agreement, Symantec grants to Customer the following rights: (a) a non-exclusive, non-transferable right to use the Licensed Software solely in support of Customer’s internal business operations at the confirmed Use Level; and (b) the right to make a single uninstalled copy of the Licensed Software for archival purposes which Customer may use and install for disaster-recovery purposes (i.e. where the primary installation of the Licensed Software becomes unavailable for use). Customer may exercise Customer’s rights through consultant(s) and sourcer(s) (“Consultants”) in order to deliver services to Customer, provided Consultants are under written obligation to comply with the Agreement, and Customer assumes full responsibility for the actions of its Consultants in connection with such use. Certain Licensed Software may require registration in order to activate the Licensed Software. If Customer fails to complete the registration requirements, the Licensed Software features may become inoperable and Customer may be unable to use such features until Customer has completed registration.

5.0 PRODUCT USE RIGHTS SUPPLEMENT. The Licensed Software may be subject to supplemental terms that define the Product Use Rights, which may be found at or accessed through http://www.symantec.com/about/profile/policies/eulas/; or successor URL, and which may be referred to as a “Product Use Rights Supplement” or “PUR Supplement.” The Product Use Rights Supplement is incorporated into the Agreement by reference and is an integral part of this Agreement, but in the event of any conflict between the Product Use Rights Supplement and this Agreement, the terms of this agreement shall control. If the applicable version of the Licensed Software is not specifically listed on or through the above website, the Product Use Rights Supplement for the most recent prior version shall apply.

6.0 LICENSE RESTRICTIONS. Customer may not, without Symantec’s prior written consent, conduct, cause or permit the: (a) use, copying, publishing, distribution, modification, rental, lease, sublease, sublicense, assigning or otherwise transferring of the Licensed Software except as expressly provided in the Agreement; (b) creation of any derivative works based on, or from the use of, the Licensed Software; (c) reverse engineering, disassembly, decompiling, or other attempt to derive source code of the Licensed Software; (except that to the extent (i) Customer may be expressly permitted to do so by applicable law and it is essential to do so solely in order to achieve interoperability of the Licensed Software with another software program, and (ii) Customer has first asked Symantec to provide the information necessary to achieve such interoperability (subject to reasonable conditions and fees at Symantec’s discretion) and Symantec has not made such information available. Any such information supplied by Symantec and any information obtained by Customer for such permitted decompilation may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the Licensed Software. Requests for such information should be directed to Symantec Enterprise Customer Care at (i) 555 International Way, Springfield, Oregon 97477, U.S.A., if Customer is located in the Americas (ii) Orion Building, Ballycoolin Business Park, Dublin 15, Ireland, if Customer is located in Europe, the Middle East, or Africa, or (iii) 10 Eunos Road 8, #13-01/02 Singapore Post Centre, Singapore, 408600 if Customer is located in Asia Pacific or Japan; (d) use of the Licensed Software in connection with service bureau, facility management, timeshare, service provider or like activity whereby Customer operates or uses the Licensed Software for the benefit of a third party; (e) use of the Licensed Software by any party other than Customer or Customer’s Consultants; (f) use of a version of the Licensed Software other than the version that Customer has acquired the right to use as indicated in an Entitlement Confirmation; nor (g) use of the Licensed Software above the Use Level indicated in the applicable Entitlement Confirmation. If Symantec provides the Licensed Software (i) embedded, incorporated or loaded onto Hardware, or (ii) made available for download to designated Hardware, then the license is restricted to use on that device only and must otherwise be in accordance with the Hardware Terms of Use (Section 13.0 below). Additionally, Customer may not, (iii) modify, block, circumvent or otherwise interfere with any authentication, license key or security measures in the use of the Licensed Software for on-line control or monitoring in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or aircraft communications systems, air traffic control, life support systems, human implantation, nuclear facilities or systems or weapons systems, or any other application known to Customer where product failure could lead to loss of life or catastrophic property damage, in which the failure of the Licensed Software could lead directly to death, personal injury, or severe physical or environmental damage.

7.0 MAINTENANCE RIGHTS AND RESTRICTIONS.

7.1 Maintenance and Renewals. Any Maintenance for the Licensed Software is subject to Symantec’s then-current Maintenance and renewal policies, including end-of-life notifications. Maintenance is made available only for the specific Licensed Software, for the Use Level, and Maintenance term stated in the applicable Entitlement Confirmation. Customer must purchase the same level of Maintenance for all licenses of a certain Licensed Software product. Maintenance purchased for a certain Licensed Software product may not be used for a different Licensed Software product. Maintenance must be uninterrupted and renewed before the end of the current Maintenance term, otherwise, to purchase Maintenance, Customer will be required to pay the applicable Maintenance fees from the end of the most recently paid Maintenance term to the start date of the new Maintenance term and Customer may be subject to additional costs in accordance with Symantec’s Maintenance policies, such as administrative and reinstatement costs. Maintenance must be purchased and renewed for the aggregate Use Level for each Licensed Software product as indicated in all applicable Entitlement Confirmations. Customer must submit to Symantec, in writing, any request for a reduction in any Maintenance renewal quantity. Symantec, in its sole discretion, but acting reasonably, may accept a Maintenance order or renewal of a quantity less than the aggregate Use Level for the Licensed Software. To renew Maintenance for any Licensed Software for which the renewal was waived by Symantec, Customer must be required to pay Maintenance fees to cover the waived period before Customer may purchase a current Maintenance product. Any use of Maintenance without a valid Entitlement Confirmation is deemed a breach of the Agreement.

7.2 Technical Support. Technical support will only be provided if the Maintenance product Customer has purchased includes technical support for the particular Licensed Software. Technical support will be performed in accordance with the Technical Support Terms and Conditions Addendum.

7.3 Content Update Rights and Restrictions. If Content Updates are included in the Maintenance product that Customer has purchased, Customer is granted the right to receive and use such Content Updates as and when they are made generally available, for the Maintenance term, and for the Use Level, indicated on the applicable Entitlement Confirmation. Content Updates shall also be subject to the Agreement. The Agreement does not otherwise give Customer the right to obtain or use Content Updates, and any unauthorized access to or use of Content Updates is deemed a breach of the Agreement.
7.4 Product Updates/Upgrades Rights and Restrictions. Product Updates/Upgrades to the Licensed Software may only be obtained for the Use Level indicated in the applicable Entitlement Confirmation(s). Any Product Updates/Upgrades that either (a) are existing license do not modify or alter Customer’s Use Level and are provided under Symantec’s then-current applicable policies. If Customer purchases a Cross-Grade to a different Licensed Software, then Symantec may issue a new Entitlement Confirmation on the condition that Customer agrees to cease using the replaced Licensed Software prior to use of such different Licensed Software. Product Updates/Upgrades shall be subject to any accompanying Entitlement Confirmation and accompanying terms and conditions, otherwise the Product Updates/Upgrades are subject to the Agreement.

8.0 LIMITED WARRANTY.

8.1 SOFTWARE PERFORMANCE WARRANTY. Symantec warrants that the Licensed Software, as delivered by Symantec and when used in accordance with the Software Documentation, will substantially conform to the Software Documentation for a period of ninety (90) days from delivery. If the Licensed Software does not operate with such warranty and such non-compliance is reported by Customer in writing to Symantec within the ninety (90) day warranty period, Symantec will do one of the following, selected at Symantec’s sole reasonable discretion: (a) repair the Licensed Software; (b) replace the Licensed Software with software of substantially the same functionality; or (c) terminate the license to the applicable Licensed Software and refund the relevant license fees paid for such non-compliant Licensed Software. The above warranty specifically excludes defects resulting from accident, abuse, unauthorized repair, modifications or enhancements, or misapplication. THE FOREGOING IS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR SYMANTEC’S BREACH OF THIS WARRANTY.

8.2 HARDWARE WARRANTY. If Symantec provides the Licensed Software to Customer on tangible media, subject to Customer’s compliance with terms of the Agreement, Symantec warrants that the tangible media upon which the Licensed Software is recorded will not be defective under normal use, for a period of ninety (90) days from delivery. Symantec will replace any defective media returned to Symantec within the warranty period at no charge to Customer. The above warranty is inapplicable in the event the Licensed Software media becomes defective due to unauthorized use of the Licensed Software.

8.3 INDEMNIFICATION BY CUSTOMER. Customer agrees, at Symantec’s request, to defend, and indemnify Symantec against, and to hold Symantec harmless from any and all claims, actions, losses, costs, fines and expenses that Symantec may incur as a result of: (a) Customer’s modification of the Symantec Solutions, and any claim against Symantec in connection with any unauthorized installation, use, copying, access or distribution of any Symantec Solution that Symantec has provided to Customer under this Agreement; (b) any alleged infringement or misappropriation of any intellectual property rights of any third party based on or related to Symantec Solution modifications not made by Symantec.

9.0 ADDITIONAL DISCLAIMERS OF WARRANTIES. WITHOUT LIMITING THE GENERALITY OF SECTION 9.0 (DISCLAIMER OF WARRANTIES) IN THE MASTER AGREEMENT AND NOTWITHSTANDING ANY OTHER TERM IN THIS ADDENDUM, SYMANTEC MAKES NO REPRESENTATIONS OR ASSUMES ANY OBLIGATIONS REGARDING, ARISING FROM OR RELATED TO THE LEGALITY OF MONITORING, INSPECTION, DECRYPTION AND/OR RE-ENCRYPTION OF CUSTOMER CONTENT IN ANY PARTICULAR JURISDICTION, AND CUSTOMER SHALL BE SOLELY RESPONSIBLE, AND SYMANTEC SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT CUSTOMER’S PROPOSED OR ACTUAL USE OF THE LICENSED SOFTWARE COMPLIES WITH APPLICABLE LAWS. CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER IS SOLELY RESPONSIBLE FOR SELECTING CONFIGURATIONS, POLICIES AND PROCEDURES IN THE LICENSED SOFTWARE THAT ARE CONFIGURABLE INCLUDING, WITHOUT LIMITATION, THE SELECTION OF FILTERED CATEGORIES AND WEB APPLICATION CONTROLS, AND FOR ASSURING THAT THE SELECTION (A) CONFORMS TO CUSTOMER’S POLICIES AND PROCEDURES AND (B) COMPLIES WITH ALL APPLICABLE LAWS.

10.0 AUDIT RIGHTS. Symantec may audit Customer’s use of the Licensed Software and Maintenance to verify that Customer’s usage complies with applicable Entitlement Confirmation(s), including without limitation through collection and use of Customer Content, self-certifications, on-site audits and/or audits done using a third party auditor. An audit will be done upon reasonable notice and during normal business hours, but not more often than once each year unless a material discrepancy was identified during the course of a prior review. Such audit shall be subject to applicable Government security requirements. Customer agrees to implement internal safeguards to prevent any unauthorized copying, distribution, installation, or use of, or access to, the Licensed Software. Customer further agrees to keep a record of use of the Licensed Software, and upon request of Symantec, provide and certify metrics and/or reports based upon such records and accounting for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Customer’s licensing and deployment of the Licensed Software. If Customer’s usage of the Licensed Software or Maintenance is not compliant, Customer will promptly submit an order within thirty (30) days, at Manufacturer’s Suggested Reseller Price (MSRP), or as mutually agreed upon with Symantec, applicable to Customer’s use of the Licensed Software or Maintenance in excess of Customer’s entitlement rights including, but not limited to software license fees, new and/or maintenance fees, and any applicable reinstatement costs. Lapsed Maintenance or excess subscription fees will be calculated at a minimum of one (1) year, unless an accurate calculation can be demonstrated. Symantec reserves the right to charge interest at the rate of one and one-half percent (1 1/2%) per month or the highest interest rate allowed by law, whichever is lower, from the date on which such amount became due. Symantec shall bear the costs of any such audit, except where the audit demonstrates that the MSRP value of Customer’s non-compliant usage exceeds five percent (5%) of the MSRP value of Customer’s compliant deployments. In such case, in addition to purchasing appropriate licenses for any over-utilized Licensed Software, Customer shall reimburse Symantec for the costs for the audit.

12.0 PRODUCT MISUSE. Customer may not use the Licensed Software in an electronic communications network that is used wholly or mainly for the provision of publicly available electronic communications services (“Public Network”) in a manner that violates the rights to privacy or freedom of expression as outlined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (collectively, “International Human Rights Standards”), of any individual user who directly accesses the Internet or otherwise transmits data through a Public Network, provided the foregoing shall not limit use of the Licensed Software in a Public Network to restrict, monitor, collect or process data accessed or transmitted by individual users based upon exceptions to the rights to privacy or freedom of expression that are recognized by International Human Rights Standards or authorized by local law or regulation.

13.0 HARDWARE TERMS OF USE. The Hardware is to be used only with the Licensed Software that is preinstalled or delivered for installation. Symantec shall not be responsible for any software, firmware, information or data provided by Customer or a third party that is contained in, stored on or integrated with any Hardware component returned to Symantec for repair or replacement, whether under warranty or not.

13.1 Technical Support Failure to Operate. Technical support for any Hardware requires purchase of a separate maintenance and support contract. Symantec will provide a replacement unit for any Hardware that fails to operate in accordance to published configuration and technical specifications within the first three (3) business days after installation. Installation must be completed within the first thirty (30) days after shipment. Failure to operate does not include cosmetic or other defects that do not directly affect the hardware’s performance. Units which fail to operate must be identified as such by either a Symantec Technical Support Engineer or a certified Support Partner engineer. A new, like-model replacement unit will be shipped using commercially reasonable means to ship the replacement Hardware. Symantec will aim
to ship within five (5) business days from receipt of notification of product failure, subject to product availability. Delivery is dependent on destination and may be impacted by delays in customs which are beyond the control of Symantec or its carriers. You are responsible for reading and complying with the return instructions included with the replacement Hardware.

13.2 Geographic Use Location. For certain Hardware, prior to using the Hardware, Customer must register a service tag for such Hardware in the location it intends to use the Hardware (“Geographic Use Location”). In the event Customer wishes to change the Geographic Use Location, Customer must contact Symantec Support to re-register the Hardware tag. Any change to the Geographic Use Location and/or any service request which requires Symantec to obtain additional information and/or validate information to acknowledge and approve warranty service entitlements may result in a delay in providing such warranty service entitlements.

13.3 Evaluation or Hardware Loan. If the Licensed Software is provided under a subscription and is provided with loaned Hardware, the license term shall commence upon Symantec's shipment of the Hardware and accompanying Licensed Software, and shall last for the duration of the subscription term. Symantec retains all ownership rights to loaned Hardware. Customer will safeguard and protect all loaned Hardware from possible damage, will not loan the loaned Hardware to others, and will not allow any lien to be imposed upon the loaned Hardware. If there is any damage to the loaned Hardware beyond normal wear or if the loaned Hardware is lost or stolen, Customer will be liable for the costs of repair or replacement.

13.4 Limited Warranty. Symantec warrants that the hardware components of the Hardware shall be substantially free from material defects in material and workmanship under normal authorized use and service and will substantially conform to the written documentation accompanying the Hardware for twelve (12) months from shipment. Any third party products that are (a) not manufactured by Symantec; (b) not embedded within products manufactured by Symantec; or (c) identified as separate items on Symantec's price list or quotes shall be subject exclusively to the manufacturer’s warranty for such products. Upon confirmation of a defect or failure of a Hardware, or component and depending on the then-current Geographic Use Location of the Hardware, Customers sole and exclusive remedy for defective Hardware, or component thereof, if notified within the Warranty Period, shall be for Symantec, at its sole option and discretion, to: (i) repair or replace the defective Hardware, or component thereof, with either a new or refurbished replacement Hardware, or component, as applicable; (ii) provide onsite repair services for any defective Hardware, or component; or (iii) repair or replace any defective Hardware returned to Symantec through Symantec’s Returned Merchandise Authorization Services process for Hardware. Any repaired parts or components or replacement parts or components provided by Symantec pursuant to any warranty service shall be warranted only for ninety (90) days, provided, however, that the warranty for such part or component may become void due to improper installation or other damage to such parts or components. Customer must remove all data from Hardware before returning it to Symantec. All defective Hardware, or any component thereof, which has been replaced, shall become the property of Symantec. All defective Hardware, or any component thereof, which has been repaired, shall remain Customer’s property. THE FOREGOING IS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, AND SYMANTEC’S SOLE AND EXCLUSIVE LIABILITY FOR SYMANTEC’S BREACH OF THE LIMITED WARRANTY STATED IN THIS SECTION 13.4.

. Symantec Signature

Symantec Corporation
350 Ellis Street
Mountain View, CA 94043 USA

Symantec Ltd.
Ballycoolin Business Park
Blanchardstown, Dublin 15
Ireland

Symantec Japan, Inc.
Akasaka Intercity, 1-11-44 Akasaka,
Minato, Tokyo
107-0052 Japan

Symantec Software (Beijing) Co., Ltd.
Room 1101, Tower E3, Oriental Plaza,
Beijing, 100738, China

Symantec Asia Pacific Pte Ltd.
6 Temasek Boulevard, #12-01
Suntec Tower 4, Singapore 038986

Signature:

Printed Name & Title:

Date Signed:

. Customer Signature

Customer (Company Name):

Signature:

Printed Name & Title:

Date Signed:

END OF SOFTWARE TERMS AND CONDITIONS ADDENDUM
These SYMANTEC CONSULTING SERVICES TERMS AND CONDITIONS (the “Addendum”) are entered into as of the Effective Date of the Addendum, and are made by and between Symantec and Customer. The “Agreement” is the combination of this Addendum and the Master Purchase Agreement referenced above (the “Master Agreement”).

1.0 DEFINITIONS. Capitalized terms shall have the meanings set forth below. Capitalized terms not defined in this Addendum shall have the meaning set forth in the Master Agreement.

1.1 “Consulting Services” means Symantec’s commercially-available installation, implementation, configuration or other consulting services as described in the applicable SOW referencing this Agreement.

1.2 “Deliverable” means a deliverable to be delivered by Symantec as described in the applicable SOW.

1.3 “Statement of Work” or “SOW” means a written statement of work signed by both Parties that describes Consulting Services to be performed by Symantec and associated Deliverables, Fees, duration of the Consulting Services, and other responsibilities undertaken by Customer and/or Symantec.

2.0 SOW(s). During the Term (as defined in the Master Agreement), Symantec and Customer may agree upon an SOW(s), and Symantec agrees to provide the Consulting Services and Deliverables as specified in the applicable SOW. The terms of the Agreement will be deemed incorporated into and will govern each SOW and will control in the event of any conflict with any such SOW, unless otherwise specified in the SOW. Notwithstanding the foregoing, Customer acknowledges and agrees that the SOW may contain additional terms and conditions that are specific to the applicable Consulting Services or Deliverables ordered, which terms and conditions will have no effect on other SOWs.

3.0 TERM AND TERMINATION OF AN SOW. The term of an SOW is as stated in the applicable SOW. Any SOW may be terminated in accordance with Section 3.0 (Term; Termination) of the Master Agreement.

4.0 LIMITED WARRANTY. In consideration of the Fees stated in the applicable SOW, Symantec will provide the Consulting Services and Deliverables described in such SOW in a good and workmanlike manner and in accordance with generally accepted industry standards.

5.0 RIGHTS IN DELIVERABLES. Notwithstanding Section 5.0 (Intellectual Property Ownership) of the Master Agreement, the following terms and conditions apply to the Consulting Services and Deliverables.

5.1 Ownership Rights. Subject to Symantec’s rights in Symantec Information, as described in Section 5.2 of this Addendum and Symantec Derivative Work as described below, all Deliverables created specifically for and provided to Customer by Symantec under the Agreement shall, upon final payment, become the property of Customer for Customer’s internal business purposes. Any inventions, designs, intellectual property or other derivative works of Symantec Information, shall vest in and be the exclusive property of Symantec ("Symantec Derivative Work"). Any inventions, designs, intellectual property or other derivative works of Customer Information (as defined below) shall vest in and be the exclusive property of Customer ("Customer Derivative Work").

5.2 Pre-Existing Work. Any pre-existing proprietary or Confidential Information of Symantec or its licensors used to perform the Consulting Services, or included in any Deliverable, including but not limited to software, appliances, methodologies, code, templates, tools, policies, records, working papers, know-how, data or other intellectual property, written or otherwise, including Symantec Derivative Works shall remain the exclusive property of Symantec and its licensors (collectively, "Symantec Information"). To the extent that Symantec incorporates any Symantec Information into the Deliverable(s), Symantec hereby grants to Customer a non-exclusive, non-transferable license to use such Symantec Information at no additional charge solely for Customer’s internal business purposes, in accordance with the limitations set forth in the Agreement. Any Customer pre-existing information, including but not limited to any Customer’s proprietary and Confidential Information provided to Symantec by Customer shall remain the exclusive property of Customer or its licensors ("Customer Information"). Customer hereby grants Symantec a non-exclusive, non-transferable license to use the Customer Information for the sole purpose of performing or producing the Consulting Services and Deliverables.

5.3 License Restrictions. The Parties will not act to infringe the intellectual property rights of the other Party or its licensors, including such rights in the Symantec Information or Customer Information. Other than as expressly permitted under this Agreement or applicable law, the Parties will not copy, sublicense, sell, rent, lease or otherwise distribute the other Party’s Information, or permit either direct or indirect use of the Confidential Information by any third party. Unless otherwise agreed, the Parties will not modify, reverse engineer, disassemble, decompile, or create derivative works of the Symantec Information or Customer Information, or otherwise attempt to build a competitive product or service using the Symantec Information or Customer Information. Notwithstanding the foregoing, the license grant set forth above may be further limited as set forth in the applicable SOW.
5.4 Retention. Customer acknowledges that Symantec provides similar services to other customers and that nothing in the Agreement shall be construed to prevent Symantec from carrying on such business. Customer acknowledges that Symantec may at its sole discretion develop, use, market, distribute and license software or documentation that is substantially similar to the Deliverables including without limitation software with similar structure, sequence and organization as the Deliverables. Notwithstanding the preceding sentence, Symantec agrees that it will not market or distribute any Deliverables that include Customer's Confidential Information.

6.0 GENERAL.

6.1 While on Customer's premises, Symantec will ensure that its personnel follow all reasonable instructions, as such are provided to Symantec prior to the performance of the Consulting Services.

6.2 During the provision of Consulting Services under the applicable SOW and for one (1) year thereafter, neither party shall actively solicit for hire, nor knowingly allow its employees to solicit for hire, any employee of the other Party associated with the performance of Consulting Services under the Agreement without the prior written consent of the other Party. This provision shall not restrict in any way the right of either Party to solicit generally in the media for required personnel, and shall not restrict employees, contractors, or representatives of either Party from pursuing on their own initiative employment opportunities from or with either Party. The Parties agree that violation of this provision will subject the violating party to liquidated damages consisting of an amount equal to six (6) months' salary for each employed, solicited, or retained person.

END OF CONSULTING SERVICES TERMS AND CONDITIONS ADDENDUM
SYMANTEC TECHNICAL SUPPORT TERMS AND CONDITIONS ADDENDUM

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<thead>
<tr>
<th>Customer Company Name:</th>
<th>Contact Name:</th>
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<tr>
<th>Customer Company Address:</th>
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<tr>
<th>Effective Date of this Addendum:</th>
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<td>(To be filled in by Symantec upon signature)</td>
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<th>Symantec Master Purchase Agreement:</th>
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These SYMANTEC TECHNICAL SUPPORT TERMS AND CONDITIONS (the "Addendum") are entered into as of the Effective Date of the Addendum, and are made by and between Symantec and Customer (referenced below as "You," "Your," or "Ordering Activity"). The "Agreement" is this combination of this Addendum and the Master Purchase Agreement referenced above (the "Master Agreement").

1. DEFINITIONS. Unless otherwise defined in these Support Terms, capitalized terms will have the meaning given below.

- "Affiliate" of a party means an entity controlled by, under common control with, or controlling such party. "Control" means having, directly or indirectly, more than fifty percent (50%) of the voting power or equivalent of the affiliated party.
- "Alternative Configuration" means where the Products are used in a configuration which does not support such Products; or in an environment that is not approved for use with the Products, or in which Symantec has not verified that the Products will operate; or where the Products have been tested and are known not to work, or work with limited functionality.
- "Authorized Reseller" means an authorized reseller of Products, including Maintenance/Support.
- "Case" means a reported Problem that is logged in Symantec’s global case tracking system and assigned a case identification number.
- "Collected Data" means certain information which Symantec may collect, retain, process, disclose and use in connection with Your use of the Technical Support, and may include, but is not limited to, Personal Data. "Customer Support Portal" means that portion of Symantec’s website URL (also referred to as MySymantec) where You may access Documentation, downloads, active tracking of Cases and other information available to You as part of Your Technical Support.
- "Designated Contact(s)" means Your support personnel that You designate and register with Symantec who work with Symantec for delivery of the Technical Support.
- "Hardware" means those specific physical hardware products, including, without limitation, physical appliances, made commercially available by Symantec and not identified as a third-party product.
- "Hardware Warranty" means the warranty period and terms and conditions accompanying the Hardware.
- "Maintenance/Support" means any Maintenance option that includes the delivery of Technical Support.
- "License Agreement" means the standard Symantec end user terms accompanying the Product(s) or a signed agreement between You and Symantec for use of the Product(s).
- "Online Services" means any commercially available Symantec branded solution delivered over the Internet and/or hosted or managed by Symantec and made available via a network.
- "Order Confirmation" means a receipt confirming the Maintenance/Support You have acquired as issued by Symantec or a Symantec affiliate.
- "Personal Data" means the personal data as defined by applicable privacy or data protection legislation, and in particular the EU Data Protection Legislation, contained in the Collected Data or otherwise provided by or collected from You, in connection with Your use of the Technical Support. The term “EU Data Protection Legislation” means the: (i) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and, as of 25 May 2018, the then applicable General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (“GDPR”); and (ii) to the extent applicable to the Technical Support, any other EU or EU Member State data protection laws with respect to the processing of Personal Data under these Support Terms.
- "Problem" means an error or a failure of a Product to conform to the Documentation or other authorized Symantec published specifications.
- "Resolution" covers a broad range of efforts to address a Problem. This includes, but is not limited to, any code change to the Product to help restore substantial conformity with the applicable Documentation (e.g. a bug fix), including changes made to maintain operating system and database system compatibility; a solution developed for You to address a Problem that is specific to You that is not made generally available; a Workaround (without a code change); or a recommendation that You migrate to a current release, or determination to address the Problem in a future release of the Product; or where Symantec takes other actions to close a Case in accordance with Symantec’s Technical Support processes. Also, a Resolution may be a more complete and/or permanent solution to enable the Product to conform substantially to its Documentation, through the delivery of a code change, or a regularly scheduled maintenance pack or Product release. Symantec reserves the right to decide how a “Resolution” may be delivered and in what time frame.
- "RMA" means the return material authorization process for replacement of Hardware under a valid Hardware Warranty or with current Maintenance/Support specifically covering such Products; as published on Symantec’s website, or as included in the Hardware Warranty terms and conditions.

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“Service Level” means the level of Maintenance/Support option You have purchased with Your Product.

“Software” means the Symantec software program, in object code form, including any Documentation included in, or provided for use with, such Software and any updates, upgrades, or enhancements made available under Maintenance/Support.

“Site Location” means the physical location associated with a single address and includes the floors of a single building or adjoining buildings when linked together by Products into a functionally integrated networking system where the Products are installed.

“Technical Support” includes, but is not limited to, any telephone, online, or knowledge base support provided to You by Symantec. Technical Support policies and instructions are available at https://support.symantec.com/en_US/article.TECH236428.html, or any successor URL.

“Workaround” means a temporary procedure by which You can avoid a reported Problem by changes to a Product Configuration. A Workaround may include specific modifications to address critical Problems (also referred to as hot fixes). In some cases, Symantec is unable to undertake further corrective action, and the temporary solution will be considered final.

2. TERM. These Support Terms are effective during the dates defined in the Order Confirmation.

3. YOUR OBLIGATIONS:

Eligibility. To remain eligible for Technical Support, You (i) must have current Maintenance/Support for the applicable Product, and (ii) must be using a currently supported version of the Product. The Product must be installed and remain in an operating environment in accordance with the Documentation and in accordance with Symantec’s published policy regarding version support. Symantec cannot provide Technical Support if You do not notify Symantec of a Problem during the Maintenance/Support term.

Designated Contacts. In accordance with Your Maintenance/Support option, You must identify to Symantec Your Designated Contacts to serve as Your primary points of contact for all Product and any related Technical Support issues, and such personnel will cooperate with Symantec to diagnose and resolve the Problem giving rise to the Technical Support Case. You are permitted to designate third-party consultants as Designated Contacts, provided that; You confirm their role in accordance with Symantec’s current process, and such parties are under written obligation to comply with these Support Terms, and You assume full responsibility for their actions in connection with these Support Terms.

Technical Data. You shall provide reasonable assistance to Symantec when receiving Technical Support, which may include providing data from the Product, or such other information as may be reasonably required by Symantec to provide Technical Support.

Supported Configuration. You shall operate the Product in an environment that solely consists of supported operating systems, hardware platforms, software solutions and applications, firmware levels, databases, devices, device drivers, and Symantec custom-developed scripts and other configuration elements, as defined in Your Documentation, or that Symantec has otherwise approved in writing, as working in conjunction with and/or supporting the Product.

Work Environment. If the Technical Support includes on-site support, You must provide to Symantec’s Technical Support personnel who perform such on-site support the following: Site Location access; access to appropriate knowledgeable personnel; a healthy and safe working environment, including light, heat, electrical outlets and ventilation; adequate work space; and access to telephones with outside lines; as Symantec may reasonably determine are necessary to perform Technical Support. You will provide all necessary authorizations for remote access, and maintaining sufficient equipment and technology to facilitate Symantec’s remote diagnostic capability and provision of Technical Support.

Data and Recovery. You are solely responsible for management of Your data back-up, data recovery, and disaster recovery measures. Symantec will not be responsible for Your internal processes and procedures to ensure the protection, loss, confidentiality, or security of Your data or information. You will maintain an unmodified copy of all Product and all related Documentation, archival files and configuration files necessary to reinstall, reconfigure or reconstruct any lost, altered or damaged Product. Symantec and its authorized service representatives will not be liable for any claims and liabilities relating to or arising out this section.

4. GENERAL SUPPORT. Symantec provides Technical Support to address Problems where Your Product does not substantially conform to its Documentation where such Product is used in accordance with its Documentation and in a supported configuration. If You report a Problem and demonstrate a non-conformance with Product specifications that can be duplicated by Symantec and that is not addressed by an Update, Symantec will aim to resolve such non-conformance. Such Resolution may include a Workaround or other temporary or permanent fix. Symantec does not represent or warrant that all non-conformities of the Product will be corrected. Symantec reserves the right to incorporate any Resolutions provided to You into future Product revisions, in its sole discretion.

Symantec shall make available from time to time through the Customer Support Portal, at no charge to You, Documentation and other resources as Symantec determines, as well as succeeding revisions designed to enable You to install, maintain and operate the Product, as made generally available and provided by Symantec. You will receive access to Symantec’s knowledge base on the Customer Support Portal to enable You to perform technical self-service for commonly known Problems and solutions to correct the Problem. The knowledge base may include technical bulletins, management tools and other information as Symantec provides from time to time, in its sole discretion.

All Technical Support will be provided in accordance with the processes set forth on the Customer Support Portal, including without limitation, the valid submission of Cases, priority rules, information and assistance required, escalation paths, Workarounds, and such other processes and information as Symantec requires to perform the Technical Support.

Symantec is not responsible for any delay or inability to provide Technical Support due to delays You cause or which are caused by network, system or telephone line problems, or by outages, including, but not limited to, power failure or surge, unsuitable physical or operating environment, improper maintenance by You or others, or failure caused by components or technology that Symantec did not supply, or denials of service or any events outside of Symantec’s reasonable control.

5. SUPPORT EXCLUSIONS. The scope of the Technical Support is expressly included in Your Maintenance/Support option. Any other support is deemed excluded. Without limiting the foregoing, You shall not receive Technical Support:

a. For Products not purchased through Symantec or an Authorized Reseller.

b. For Products maintained or repaired by anyone other than Symantec personnel or Symantec authorized representatives.

c. For a Problem if You failed to notify Symantec of the Problem during the Maintenance/Support term.

d. For any third-party products not provided by Symantec, including but not limited to, installation, configuration and maintenance of third-party products and interoperability of Symantec Products with third-party applications, or other services.

e. To the extent You obtained non-Symantec technical support through a Symantec partner and/or separate service provider.

f. Which in the reasonable opinion of Symantec is necessitated because the Product: (i) has been subject to deliberate act, accident, neglect or misuse, modification, improper programming, power failure or surge, unsuitable physical or operating environment or other than normal use or causes; (ii) utilizes workarounds, components or technology not provided by Symantec; (iii) has been used in an Alternative Configuration; or (iv) has not been used and maintained in accordance with the Product Documentation.

g. In the form of Product training, security solutions enablement, security advisory, managed security or implementation services or the like, and which are available for separate purchase; unless Symantec deems such work to be necessary to perform a specific Technical Support Case.
6. SUPPORT REQUIREMENTS AND RESTRICTIONS SPECIFIC TO HARDWARE. Subject to these Support Terms, Symantec will provide Technical Support for Hardware Products under current Maintenance/Support at the Service Level purchased. All failed Hardware and parts replaced by Symantec will become the property of Symantec. Symantec may, in its sole discretion, provide You with diagnostic documentation, spare parts, tools, test equipment and other material used in performing Technical Support. All such items remain the sole and exclusive property of Symantec and Symantec grants no license to any such items. You must immediately return such items to Symantec upon request or, at Symantec’s option, grant immediate access to and facilitate Symantec’s recovery of such items.

Same product coverage. Hardware of the same type located at a Site Location must be covered by the same Service Level. You must have both the chassis and all associated components covered under the same Maintenance/Support option. You shall notify Symantec (or Your Authorized Reseller) if additional Products or components of the same type are licensed or purchased during Your current Maintenance/Support term, and shall pay pro-rated Maintenance/Support fees for such additional Product(s) or components if You request co-termination of Your Technical Support.

Software subscription. If a Hardware Product is running a subscription of a Software Product, then the Maintenance/Support term for the Hardware Product must run for the same dates as the Maintenance/Support term for the Software Product.

Software updates. You may only upload Updates to the Software onto Hardware if You have current Maintenance/Support at the time of installation of the Updates. You may be required to purchase Hardware upgrades, improvements or changes in order to install or use a Software Update.

Hardware Product inspection. Upon prior notice, subject to Government security requirements, Symantec may conduct an onsite, physical, certification inspection before the start of any Technical Support delivery, under these Support Terms, to determine whether the Hardware is in good operating condition when: (i) Maintenance/Support has lapsed for six (6) months or more and You request to reinstate Maintenance/Support for the Hardware, or (ii) You did not purchase Maintenance/Support when You licensed or purchased the Hardware and more than twelve (12) months have lapsed. If Symantec determines that the Hardware needs repair, after such inspection, due to Your failure to adequately maintain the Hardware, Symantec will use an Authorized Reseller to provide You with an estimate for repair. An inspection certification charge will be applied and invoiced by the Authorized Reseller at Symantec’s Schedule Pricelist rate for Professional Services. Ordering Activity agrees to pay any travel expenses in accordance with Federal Travel Regulations (FTR) or Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

Site location address. You must notify Symantec in writing of any physical moves of Hardware to a new location no less than ten (10) days in advance of the move. You must ensure Symantec has accurate Site location address information for Hardware covered by Maintenance/Support. Each change in Hardware locations will require a new Site Validation Approval (process to determine Symantec’s ability to meet Hardware delivery times at Your location for the Hardware and Service Level in question) from Symantec, and may result in modifications to the Service Level available. Failure to provide accurate Site Location(s) information may result in additional charges to provide Technical Support, and delayed delivery times.

Site and service level validation approval. Certain Maintenance/Support options may not be available at certain Site Locations; and Service Level options may vary between locations or by Hardware type. To ensure that Symantec can provide the Maintenance/Support options and Service Levels at the Site Location in question, a Site Validation Approval may be required if not already pre-approved by Symantec prior to the acceptance of a Maintenance/Support order or a Technical Support Case. All Service Level commitments that include guaranteed expedited delivery times must be approved by Symantec prior to entering into a contract for such Maintenance/Support options.

Hardware returns. You are responsible for Hardware returns according to Symantec’s RMA policy and process located at https://www.symantec.com/support-center/policies. Failure to conform to Symantec’s RMA policy will result in the temporary suspension of Technical Support by Symantec. Any suspension, for any reason, will not extend the Maintenance/Support term. Prior to returning any Hardware to Symantec, You must completely erase all of Your Confidential Information from any storage media. Notwithstanding anything to the contrary, if the inoperable Hardware is not received at Symantec’s specified return location within ten (10) business days of Your receipt of the replacement Hardware, You must pay the list price per unit as stated in the Schedule Pricelist. If crossing international borders, proof of shipment is sufficient for proof of return. Your failure to return Hardware promptly or pay any invoice under these Support Terms will result in the suspension of Technical Support by Symantec.

7. FEEDBACK. You may provide suggestions, comments or other feedback (“Feedback”) with respect to the Products or the Technical Support delivered. Feedback, even if designated as confidential by You, shall not create any confidentiality obligations on Symantec unless a separate written agreement is signed by the parties. You will not give Feedback that is subject to license terms that seek to require any product, technology, service or documentation incorporating or derived from such Feedback, or any intellectual property of Symantec, to be licensed or otherwise shared with any third party. Furthermore, unless otherwise provided in a separate subsequent agreement between the parties, Symantec shall be free to use, disclose, reproduce, license, distribute, and otherwise exploit the Feedback provided as it sees fit, entirely without obligation or restriction of any kind because of intellectual property rights or otherwise, except that Symantec acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203.

8. CONFIDENTIAL INFORMATION. For purposes of these Support Terms, “Confidential Information” means the non-public information provided by one party (“Discloser”) to the other party (“Recipient”) related to the business relationship between the parties, provided that such information is: (a) identified or marked as confidential at the time of disclosure by the Discloser, or (b) if the initial disclosure is not in written or other tangible form, the Confidential Information will be so identified at the time of disclosure and reduced to written or other tangible form, appropriately marked and submitted by the Discloser to the Recipient as soon as reasonably practicable thereafter, but no later than thirty (30) days after disclosure. Confidential Information of Symantec shall include product architecture, product research and development plans, non-public financial data and roadmaps, whether marked as confidential or not. The Recipient may use the Confidential Information that it receives from the Discloser solely for the purpose of performing activities contemplated under these Support Terms. For a period of five (5) years following the applicable date of disclosure of any Confidential Information, the Recipient will not disclose the Confidential Information to any third party. The Recipient will protect it by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to its Affiliates, agents and subcontractors with a need to know in order to fulfill the purpose of these Support Terms, under a nondisclosure agreement at least as protective of the Discloser’s rights as this Agreement. This Section imposes no obligation upon the Recipient with respect to Confidential Information which: (i) is or becomes public knowledge other than by breach of these Support Terms; (ii) was in the Recipient’s possession before receipt from the Discloser and was not subject to a duty of confidentiality; (iii) is rightfully received by the Recipient without any duty of confidentiality; (iv) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (v) independently developed by the Recipient. The Recipient may disclose the Discloser’s Confidential Information as required by law or court order provided: (x) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure, if legally permissible; and (y) discloses only as much of the Confidential Information as is required. Each party will retain all right, title and interest to its Confidential Information. Symantec recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. § 552, which requires that certain information be released despite being characterized as “confidential” by the vendor.

9. SYMANTEC LIMITED WARRANTY AND DISCLAIMER FOR TECHNICAL SUPPORT. Symantec warrants, for a period of thirty (30) days from the date of performance of Technical Support, that such Technical Support will be performed in a manner consistent with generally accepted industry standards. For Technical Support not performed as warranted in this provision, and provided You have reported such non-conformance to Symantec within thirty (30) days of performance of such non-conforming Technical Support, Symantec will, at its discretion, arrange for one of the following remedies; either

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correct any non-conforming Technical Support or refund the relevant fees paid for the non-conforming Technical Support. SYMANTEC’S WARRANTIES CONTAINED HEREIN RUN ONLY TO YOU, AND ARE NOT EXTENDED TO ANY THIRD PARTIES. SYMANTEC NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE TECHNICAL SUPPORT PROVIDED.

UNDER THESE SUPPORT TERMS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH ABOVE ARE YOUR EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. SYMANTEC MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE PRODUCTS OR TECHNICAL SUPPORT WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE PRODUCTS OR TECHNICAL SUPPORT WILL BE UNINTERRUPTED OR PROBLEM-FREE. YOU MAY HAVE OTHER WARRANTY RIGHTS, WHICH MAY VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

10. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THESE SUPPORT TERMS FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SYMANTEC OR ITS LICENSORS, RESSELLERS, SUPPLIERS OR AGENTS BE LIABLE TO YOU FOR (I) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES; LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (II) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THESE SUPPORT TERMS, EVEN IF SYMANTEC OR ITS LICENSORS, RESSELLERS, SUPPLIERS OR AGENTS HAVE BEEN ADVISED SUCH DAMAGES MIGHT OCCUR. IN NO CASE SHALL SYMANTEC’S LIABILITY EXCEED THE FEES YOU PAID FOR THE TECHNICAL SUPPORT GIVING RISE TO THE CLAIM. NOTHING IN THESE SUPPORT TERMS SHALL OPERATE TO EXCLUDE OR LIMIT SYMANTEC’S LIABILITY TO YOU FOR DEATH OR PERSONAL INJURY ARISING OUT OF NEGLIGENCE, FRAUD, OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW.

11. PROCESSING OF PERSONAL DATA. You acknowledge and agree that Symantec will collect and process Personal Data as part of the provision, and Your use, of the Technical Support under these Support Terms.

12. EXPORT REGULATION. The export, re-export, or in-country transfer of Technical Support, including documentation may include controlled technology or technical data (collectively “Controlled Technology”) is subject to the export laws and regulations of the U.S. and other jurisdictions including, but not limited to, the U.S. Export Administration Regulations, European Union Council Regulations, and Singapore Strategic Goods Control Act. The export or re-export of Controlled Technology in violation of the foregoing laws and regulations is strictly prohibited. Controlled Technology may also be subject to import, resale, distribution, transfer or use restrictions requiring that each party acts prior to download or use of the Controlled Technology. Controlled Technology is prohibited for export or re-export to Cuba, North Korea, Iran, Syria, Sudan, the Crimea Region of Ukraine, and to any other country or region subject to trade sanctions. You may not export any Controlled Technology related to the use or development of missiles or chemical, biological, and nuclear weapons. Furthermore, You may not export any Controlled Technology to any military entity, or to any other entity for any military purpose, unless subject to a valid license specifically permitting such export. You represent that it is neither located in, nor a resident or national of, any prohibited country or region. You further represent that it is not a sanctioned Person or entity named on a U.S. or other government list (including, but not limited to, lists published by the U.S. Bureau of Industry and Security, U.S. Directorate of Defense Trade Controls, U.S. Office of Foreign Assets Control, European Union, and United Nations). Parties shall not, directly or indirectly, facilitate giving a sanctioned country or entity access to Controlled Technology. Each party agrees that it will comply with all applicable export or import control laws and regulations and obtain appropriate U.S. and foreign governmental authorizations before exporting, re-exporting, importing, reselling, distributing, transferring or using any Controlled Technology.

13. SURVIVAL. The following provisions of these Support Terms survive termination: Definitions, Confidential Information, Warranty Disclaimers, Limitation of Liability, Processing Personal Data, Export Regulation, Survival, and General.

14. GENERAL. Symantec reserves the right and You consent to Symantec’s use of subcontractors to provide Technical Support. You may not assign the rights granted under these Support Terms, in whole or in part and whether by operation of contract, law or otherwise, without Symantec’s prior express written consent. For all purposes of these Support Terms each party shall be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract. Symantec reserves the right to modify, amend or withdraw any of its Technical Support without notice prior to the end of the then-current Support Term/Support term, provided that such change shall not materially impact the scope of Technical Support under these Support Terms. Neither party is liable for failure or delay due to strikes, wars, acts of terrorism, fires, floods, natural disasters, labor shortages, government regulations, or other causes beyond its reasonable control. The section headings in these Support Terms are for convenience of reference only and shall in no way affect interpretation of these Support Terms. If You are located in North America or Latin America, these Support Terms are governed by the Federal laws of the United States of America. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any applicable amendments, and without regard to principles of conflicts of law. If any provision of these Support Terms is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and remaining provisions of these Support Terms shall remain in full force and effect. A waiver of any breach or default under these Support Terms shall not constitute a waiver of any other subsequent breach or default. These Support Terms and any related Order Confirmation are the complete and exclusive agreement between You and Symantec relating to the Technical Support and supersede any previous or concurrent oral or written communications, proposals, and representations with respect to its subject matter. These Support Terms control over additional or different terms of any confirmation, invoice or similar document, even if accepted in writing by both parties. A negotiated purchase order signed by both parties shall supersede this agreement. Any amendments and waivers shall be effective only if made by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver.

Symantec Signature

Symantec Corporation
350 Ellis Street
Mountain View, CA 94043 USA

Symantec Ltd.
Ballycoolin Business Park
Blanchardstown, Dublin 15
Ireland

Symantec Asia Pacific Pte Ltd.
6 Temasek Boulevard, #12-01
Suntec Tower 4, Singapore 038986
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<th>Symantec Japan, Inc.</th>
<th>Symantec Software (Beijing) Co., Ltd.</th>
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<td>Room 1101, Tower E3, Oriental Plaza, Beijing, 100738, China</td>
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| Date Signed: |

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END OF TECHNICAL SUPPORT TERMS AND CONDITIONS ADDENDUM
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached *Tanium* ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS Schedule Contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a
Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
TANIUM
TANIUM SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

SOFTWARE LICENSE RIDER – U.S. GOVERNMENT
This Software License Rider ("Rider") modifies the commercial computer software End User License Agreement ("EULA") which is included as "click-wrap" within the commercial computer software and/or included as an attachment to the EC America ("Agreement"). This Rider brings the EULA and this Software Rider into compliance with the Commercial Computer Software Agreement Terms that Conflict or Are Incompatible with Federal Law. 80 Fed. Reg. 15011 (March 20, 2015), and GSA Acquisition Letter MV-15-03, “Memorandum for the Acquisition Workforce: Class Deviation Addressing Commercial Supplier Agreement Terms that Conflict or Are Incompatible with Federal Law” (July 31, 2015). FAR 12.212(a) and DFARS 227.7202-3 require the Government procure commercial computer software under the licenses customarily provided to the public except to the extent that those licenses are inconsistent with Federal law. The EULA is modified as follows:

1. Click-wrap. No Government nor any Government authorized end user shall be deemed to have agreed to any clause by virtue of it appearing in the EULA; either the EULA and this Software Rider are accepted by inclusion in the Agreement by an authorized official. If the EULA or any other third-party EULA is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause; such indemnity clause is deemed to be stricken from the EULA. The Government acknowledges that third party terms may apply but does not agree to be bound by them unless provided for review. Inclusion of these Third Party License Agreement(s) within release notes within the Licensed Software file is an acceptable presentation of the Third Party License Agreement(s), provided that the Third Party License Agreement(s) will not create any new monetary obligation upon the Government in the event that the User is in breach of the EULA or otherwise violates the terms of the Agreement. This provision shall not be construed to limit the Government’s right to enforce against the User, if the User breaches the EULA.

2. Applicability. The EULA and this Software License Rider is a part of the Agreement between ECA and the Government for the acquisition of the supply or service that necessitates a license, except to the extent inconsistent with Federal law.

3. End user. This Software License Rider and the EULA shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

4. Law and disputes. This Software License Rider and the EULA are governed by Federal law.

5. Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

6. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

7. Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

8. Any disputes will be resolved through the Disputes Clause in the Agreement.

9. Continued performance. If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it shall continue performance while pursuing rights under the Disputes Clause in the Agreement.

10. Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to the Agreement, (a) binding arbitration shall not be used unless specifically authorized by agency guidance, and (b) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

11. Additional terms. (a) This Software License Rider may unilaterally incorporate additional terms by reference. Terms may be included by reference using electronic means (e.g., via web links, click and accept, etc). Such terms shall be enforceable only to the extent that:

12. When included by reference using electronic means, the terms are readily available at referenced locations; and

13. Terms do not materially change Government obligations; and

14. Terms do not increase Government prices; and

15. Terms do not decrease overall level of service; and

16. Terms do not limit any other Government rights addressed elsewhere in this contract.

17. Any order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award are not enforceable against the Government.

18. No automatic renewals. If any license or service tied to periodic payment is provided under the EULA (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

19. Indemnification & Liability. Any clause of the Agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. § 516. The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law or where settlement has been agreed to by the Government agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the Government’s rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement.

20. Audits. Any clause of the Agreement permitting the commercial supplier or licensor to audit the end user’s compliance with the Agreement is hereby amended as follows: (a) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. (b) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52.233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process; (c) Any audit requested by the Contractor will be performed at the Contractor’s expense, without reimbursement by the Government and in accordance with Government security requirements.

21. Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

22. Use of Government logos. Notwithstanding any contrary provision contained in the Agreement, the vendor shall not be permitted to use U.S. Government logos for advertising or endorsement purposes, without obtaining the separate written consent of the Government.

23. Right of entry. No provision in the Agreement shall provide any Party the right of entry to any Government facility.
26. **Termination.** Termination, including termination for convenience of the government, may occur in accordance with the procedures described in Paragraph 4 of the Tanium EULA in the GSA Schedule Contract. Any terms of unilateral termination by Tanium are hereby deleted. Recourse against Tanium is provided under any terms made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**End User License Agreement**

1. This End User License Agreement (the “Agreement”) is entered into by and between Tanium and a company organized under the laws of , with offices located (hereinafter “Customer”), to permit the use of the Licensed Software and Services as defined herein and purchased by Customer. This Agreement is made effective as of the last date signed below (the “Effective Date”). “Tanium” means the Tanium entity listed above or, if no entity is specified above, the Tanium entity identified on the Tanium-provided Quote or otherwise communicated to the Customer by Tanium.

2. **Grant of License; Affiliates and Managing Parties.** During the term of this Agreement, Tanium grants Customer a revocable, nontransferable, nonexclusive license to use the object code version of the software purchased in connection with this Agreement (the “Licensed Software”) and the Documentation for Customer’s internal use only during the applicable Term. The term “Licensed Software” will include any updates, bug fixes, and versions (collectively, “Enhancements”) provided by Tanium in connection with a Support Services entitlement or subscription license grant. The Licensed Software is licensed on a per Managed OS Instance basis. A “Managed OS Instance” means a physical or virtual hardware device where the Software is installed, and where that device is capable of processing data. Managed OS Instances include any of the following types of computer devices: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homeworker/teleworker, home-based system, file server, print server, e-mail server, Internet gateway device, Storage Area Network Server (SAN), Terminal Servers, or portable workstation connected or connecting to a server or network. In the case of a virtual system, in addition to the virtual Managed OS Instances, the Hypervisor is considered to be a single instance if Licensed Software is installed at the Hypervisor level.

3. **Affiliates and Managing Parties.** The term “Affiliate” means an entity that is controlled by, controls, or is under common control of the Customer, where “control” means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation or, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Licensed Software provided that (a) the Affiliate only uses the Licensed Software for Customer’s or Affiliate’s internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is responsible for and remains liable for the Affiliate’s use of the Licensed Software in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer’s information technology resources (“Managing Party”), Customer may allow its Managing Party to use the Licensed Software provided that (a) the Managing Party only uses the Licensed Software for Customer’s or Affiliate’s internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement, and (b) Customer is responsible for and remains liable for the Managing Party’s use of the Licensed Software in compliance with the terms and conditions of this Agreement.

4. **Restrictions.** The license granted to Customer in this Agreement is restricted as follows:
   (a) **Customer’s Benefit.** Customer must not use or permit the Licensed Software or Documentation to be used in any manner, whether directly or indirectly, that would enable Customer’s personnel or any other person or entity to use the Licensed Software or Documentation for anyone’s benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use.
   (b) **Limitations on Copying and Distribution.** Customer must not copy or distribute the Licensed Software or Documentation without Customer’s express prior written consent. Customer may make a single copy of the Licensed Software for backup and archival purposes.
   (c) **Limitations on Reverse Engineering and Modification.** Except to the extent expressly permitted by applicable law, Customer must not reverse engineer, decompile, disassemble, modify or create derivative works of the Licensed Software or Documentation.
   (d) **Sublicense, Rental and Third Party Use.** Except to the extent expressly permitted by this Agreement, Customer must not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the
   (e) **Licensed Software or Documentation.** The Customer must not operate a service bureau or other similar service for the benefit of third parties using the Licensed Software.
   (f) **Proprietary Notices.** Customer must not remove any proprietary notices (e.g., copyright and trademark notices) from the Licensed Software or Documentation. Customer must reproduce the copyright and all other proprietary notices displayed on the Licensed Software on each permitted backup or archival copy.
   (g) **Use in Accordance with Documentation.** All use of the Licensed Software shall be in accordance with Tanium’s then-current documentation made generally available by Tanium to its licensees for use of the Licensed Software. Documentation may be updated from time to time to provide updated instructions on proper use of Tanium products, but is not intended to alter the terms of this End User License Agreement (EULA). In the event of a conflict between the Documentation and this EULA, this EULA shall prevail. Tanium will have no liability damages resulting from Customer’s use of Tanium products when that use does not comply with the Documentation. Current documentation is available at https://docs.tanium.com/ (“Documentation”).
   (h) **Compliance with Applicable Law.** Customer shall be solely responsible for ensuring that Customer’s use of the Licensed Software and Documentation is in compliance with all applicable foreign, Federal, state and local laws, rules, and regulations.
   (i) **Tanium’s Intellectual Property.** Customer will not use the Licensed Software, Documentation or Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property, including the Licensed Software and Documentation made available to Customer by Tanium in connection with the sale of the Licensed Software, without the prior written consent of Tanium.
   (j) **Competition.** Customer will not use the Licensed Software in a manner that competes with Tanium or to assist a third party in competing with Tanium.

6. The Licensed Software is licensed to Customer, not sold. The Licensed Software, Documentation, and Services provided by Tanium contain material that is protected by United States copyright, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks,
service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Licensed Software, Documentation, and Services provided by Tanium will remain the sole and exclusive property of Tanium or its licensors and suppliers, as applicable.

7. Third Party Components. The Licensed Software may contain certain third party components ("Third Party Components") that are provided to Customer under terms and conditions which are different from this Agreement, and which require Tanium to provide Customer with certain notices and/or information. Tanium will identify such Third Party Components in the Release Notes, “LICENSE.TXT” or “READ-ME” file(s) (and shall include any associated license agreement, notices and other related information therein) delivered with the Licensed Software or future Enhancements. Customer’s use of each Third Party Component that contains or is accompanied by its own license agreement (“Third Party License Agreement”), as identified in the Release Notes, LICENSE.TXT or READ-ME file(s), will be subject to the Third Party License Agreement, and not this Agreement. Customer will be liable for its breach of the Third Party License Agreement without regard to the foregoing. The following terms and conditions apply to all Third Party Components: (i) all Third Party Components are provided on an “AS IS” basis; (ii) Tanium will not be liable to Customer or indemnify Customer for any claims related to the Third Party Components; and (iii) Tanium will not be liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages with respect to the Third Party Components. Except as may be provided in the LICENSE.TXT file(s), Customer’s sole and exclusive remedy with regard to any defect, claim, or other dispute relating to the Third Party Components is to cease use of the Third Party Components.

9. Term and Termination. If Customer purchases perpetual license(s), the license will commence on the Effective Date of the purchase order and continue in effect per the agreed upon purchase order; or, if Customer purchases subscription license(s), the license will commence on the Effective Date and continue in effect for term of the subscription license or until this Agreement is terminated as provided in this Section, as applicable (the “Term”). Either party may terminate this Agreement on written notice to the other party if the other party is in material breach of its obligations hereunder and fails to cure the breach within thirty (30) days of such written notice. In addition, either party may, in its sole discretion, elect to terminate this Agreement on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party. Upon any termination or expiration of this Agreement, the license granted in Section 1 will automatically terminate and Customer will have no further right to possess or use the Licensed Software. On Tanium’s request, Customer shall provide Tanium with a signed written statement confirming that the Licensed Software has been permanently removed from Customer’s systems. Tanium reserves the right to seek all remedies available at law or in equity for Customer’s material breach of this Agreement.

10. Fees and Expenses; Order/Entitlement; Delivery and Taxes.

(a) Fees and Expenses. Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner (“Reseller”), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. Unless Customer orders directly from a Reseller, Customer will pay the Licensed Software and Service fees directly to Tanium and Tanium will fulfill all orders per the purchase order. The parties will enter into a schedule(s) or purchase order(s) that describe the Licensed Software and/or Services to be acquired by Customer (each a “Schedule”). This Agreement applies to any Schedule that references this Agreement and that Tanium accepts, provided the purchase order mirrors the terms and conditions of the Tanium provided Quote. Fees for Licensed Software licensed on a subscription basis and fees for Support Service will be billed on an annual basis, payable in advance. Fees for Licensed Software licensed on a perpetual basis will be billed and payable payable in advance. All amounts to be paid by Customer are due and payable thirty (30) days after Customer’s receipt of an invoice.

(b) Delivery and Taxes. All amounts payable by Customer to Tanium under this Agreement are exclusive of any taxes, levies, or duties, of any nature, that may be assessed by any jurisdiction which are allowable under the terms of the FAR, GSAR and the terms of this contract (collectively “Taxes”).

11. For further clarification, all Licensed Software will be delivered and accessed electronically. In conjunction with the billing, collection and payment of any Taxes, Customer must provide Tanium with a physical address of the download site for the Licensed Software. This address will be used as the “shipped to address” on all invoices. If the download address changes prior to the next billing cycle, the Customer will advise Tanium in writing at ar@tanium.com of the change indicating the revised “shipped to address” at least thirty (30) days prior to the next billing cycle. Customer will pay all Taxes relating to or under this Agreement unless Customer is exempt from the payment of such Taxes and provides Tanium with evidence of the valid exemption certificate(s), if required. If Customer’s tax status changes, Customer will notify Tanium by email or in writing at ar@tanium.com at least thirty (30) days in advance of Customer’s next billing cycle. If Tanium becomes entitled to a refund or credit of Taxes previously paid by Customer pursuant to this Section, any such refunded or credited amounts (including any interest received thereon) will be promptly granted as a credit memo against Customer’s account or paid over to Customer at its request.

12. Unless both Customer and Tanium agree otherwise, Customer will make no deduction from any amounts owed to Tanium for any un-invoiced taxes of any type. Subject to applicable laws, Tanium will cooperate with Customer to reduce the amount of applicable withholding taxes and Customer will not take any action that is prejudicial to obtaining an available tax exemption by Tanium. Upon Customer’s written request, Tanium will provide Customer with written proof that it has made all registrations and reports required for these tax payments. If Tanium claims a tax exemption that may affect any obligations of Customer, Tanium will disclose this exemption to Customer on a timely basis and provide Customer with all exemption documentation requested by Customer. If Customer is required to withhold amounts from any payments due to Tanium hereunder as prescribed by applicable law, Customer will make such withholding, remit such amounts to the appropriate taxing authorities and promptly, within thirty (30) days of the payment date, furnish Tanium a certificate for tax deducted at the source for which Tanium may be entitled to claim tax credit in its country of tax residency. Until such tax certificate is received and approved by Tanium, amounts withheld by Customer will continue to be due to Tanium.

13. Customer will indemnify Tanium from and against any disputed Taxes, including interest and penalties, on the contracted products or services, by the taxing authorities. If the taxation of the item(s) is disputed by the taxing authorities, Tanium will notify Customer, if practical, to work with Customer and the taxing authorities to minimize any potential deficiencies.

14. Services. “Services” means, collectively, the Support Services and any other services acquired by Customer from Tanium. If Customer has a current Support Services entitlement or a subscription license grant governed by this Agreement, then Tanium will provide Customer with the support and maintenance services described in Exhibit A (the “Support Services”). All Services are subject to the terms and conditions of this Agreement.

15. Limited Warranty; Disclaimer. Tanium warrants that (i) for a period of 60 (sixty) days from the Effective Date, the Licensed Software will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Licensed Software prior to delivery for viruses, Trojan horses, and other malicious code. Tanium shall not be liable for failures caused by third party hardware and software (including Customer’s own systems), misuse of the Licensed Software, or Customer’s negligence or willful misconduct. The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer and the sole and exclusive liability of Tanium for breach of the foregoing warranty in Sections 7(i) and 7(ii), shall be to repair or replace the non-conforming Licensed Software, or if repair or replacement would in Tanium’s opinion be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such
nonconforming Licensed Software. Tanium shall not be responsible for use of the Licensed Software if not operated in a manner recommended in the Documentation. EXCEPT AS PROVIDED IN THIS SECTION, THE LICENSED SOFTWARE AND ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITH ALL FAULTS.

16. "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE AND SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT,

17. QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES

18. NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY TAMIUM SHALL CREATE ANY ADDITIONAL WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF TANIUM’S OBLIGATIONS HEREUNDER. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer’s remedies will be limited to the maximum extent allowed by Sections 7 and 9.

19. Indemnities. Tanium will indemnify and defend Customer from and against any claim, demand, action, proceeding, judgment, or liability arising out of a claim by a third party that Customer’s use of the Licensed Software in conformance with the terms of this Agreement infringes a United States patent, copyright, or trade secret of that third party and pay any amounts awarded in a final judgment or a settlement approved by Tanium. The foregoing indemnification obligation of Tanium is contingent upon Customer promptly notifying Tanium in writing of such claim, permitting Tanium sole authority to control the defense or settlement of such claim, and providing Tanium reasonable assistance in connection therewith. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to either: (i) procure for Customer the right or license to continue to use the Licensed Software free of the infringement claim; or (ii) modify the Licensed Software to make it noninfringing, without loss of material functionality. If either of these remedies is not reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Licensed Software, prorated for use over (i) a three (3) year period for Licensed Software licensed on a perpetual basis or (ii) the remaining unused subscription term for Licensed Software licensed on a subscription basis. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of (i) the use or combination of the Licensed Software with any third party hardware, software, products, data or other materials, including Customer’s own systems and data; (ii) modification or alteration of the Licensed Software by anyone other than Tanium; (iii) Customer’s use of the Licensed Software in excess of the rights granted in this Agreement; (iv) any Third Party Components; or (v) a business method or process that is inherent to Customer’s business. The provisions of this Section state Customer’s sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Licensed Software and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed. Customer will indemnify, defend, and hold Tanium harmless from any claim, demand, action, proceeding, judgment, or liability from a third-party claim arising out of an Excluded Claim. Customer’s indemnification obligation is contingent upon Tanium promptly notifying Customer in writing of such claim, permitting Customer sole authority to control the defense or settlement of such claim, and providing Customer reasonable assistance in connection therewith.

20. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIUM OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF OR RELATED TO THE LICENSED SOFTWARE, SERVICES OR THIS AGREEMENT, EVEN IF

21. TANIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE

22. MAXIMUM AGGREGATE LIABILITY OF TANIUM AND ITS LICENSORS AND SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL BE

23. LIMITED TO FEES PAID BY CUSTOMER FOR THE LICENSED SOFTWARE OR SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY

24. PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH CLAIM. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by Customer more than one (1) year after such action accrued. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s gross negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by contract as a matter of law.

25. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY


27. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION)

28. Confidentiality. The parties agree to hold each other’s Confidential Information in strict confidence and not to make each other’s Confidential Information available in any form to any third party (other than their authorized agents) or to use each other’s Confidential Information for any purpose other than as specified in this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer must ensure that any Managing Party will hold Tanium’s Confidential Information in confidence in accordance with this Section 10. "Confidential Information" shall mean, with respect to a party hereto, all information or material which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Licensed Software. Each party’s Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; or (iii) is independently developed by the receiving party.

29. Notwithstanding the foregoing, Customer acknowledges and agrees that Tanium may use Customer’s Confidential Information internally at Tanium for sales/support analytics and training. When the end user is the Federal Government, such markings shall not be dispositive in determining that material containing such markings is confidential.

30. Tanium recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor and Customer recognizes that information that is “trade secrets and
commercial or financial information obtained from a person and privileged or confidential” is exempt from release under FOIA (5 U.S.C. 552(b)(4)).


(a) Evaluation Software. This Section 11.1 only applies to Licensed Software designated by Tanium as “Evaluation Software.” Subject to Section 2, Tanium grants to Customer a non-transferable, nonexclusive limited license to use the Evaluation Software for its internal evaluation purposes only. The term of this license is for a period of thirty (30) days following delivery of the Evaluation Software (“Evaluation Period”). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Software in a non-production environment. Customer bears the sole risk of using the Evaluation Software. Tanium provides the Evaluation Software “AS-IS” and gives no representation, warranty, indemnity, guarantee or condition of any kind. To the maximum extent permitted by law, Tanium’s total aggregate liability and that of its third party licensors and partners is expressly limited to five hundred dollars ($500) for any and all damages regardless of the nature of the claim or theory of liability. Because the Evaluation Software is provided “AS-IS,” Tanium may not provide Services for it. This Section 11.1 supersedes any other inconsistent term in the Agreement for purposes of the Evaluation Software.

(b) Feedback. Customer may provide suggestions, comments, or other feedback (collectively, “Feedback”) to Tanium with respect to its products and services, including the Licensed Software. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer’s intellectual property rights to make use of the Feedback, Customer hereby grants Tanium an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Tanium’s business, including enhancement of the Licensed Software.

(c) Beta Software. If the Licensed Software released to Customer has been identified by Tanium as “Beta Software,” then the provisions of Section 11.1 will apply. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide Services for the Beta Software.

33. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s) of the Beta Software that it received from Tanium.

34. Governing Law/Jurisdiction. This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of California, if you purchased the Licensed Software and Services in the United States or Canada, or (b) in England and Wales if you purchased the Licensed Software and Services in any country other than the United States and Canada, unless another local law is required to be applied. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. The state or federal courts of competent jurisdiction located in San Francisco, California, when the laws of California apply, and the courts of London, England when the laws of England and Wales apply, shall each have exclusive jurisdiction over all disputes relating to this Agreement.

36. General. This EULA sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them. Nothing in this Agreement modifies the commitments between the prime contractor and the Customer under the GSA Schedule Contract, Schedule Pricelist and Purchase Orders executed between them, to which Tanium is not a party. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. There are no intended or implied third party beneficiaries of this Agreement. The following provisions shall survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 5.1 (Fees and Expenses), 9 (Limitation of Liability), 10 (Confidentiality), 12 (Feedback), 12 (Governing Law/Jurisdiction), 15 (General), 17 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), and Customer’s indemnity obligations hereunder. Tanium may assign any of its rights or obligations hereunder as it deems necessary. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

37. Export. Customer acknowledges that the Licensed Software is subject to the laws, regulations and requirements of the United States and other countries including European Union regulations. Without limiting the foregoing, Customer agrees that it will not export, reexport, or transfer the Licensed Software in contravention of the foregoing, or provide the Licensed Software or Services to any person, in any way, or for any purpose that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer acknowledges that certain products containing encryption may be subject to import and/or restrictions in other countries. Tanium will reasonably cooperate, in Tanium’s discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals, however, Customer acknowledges it is Customer’s ultimate responsibility to comply with any and all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale. In addition to the other requirements of this Section, Customer shall be solely responsible for complying with the import laws and regulations and other relevant restrictions, if any, of any country into which Customer imports the Licensed Software. Customer shall defend, indemnify, and hold harmless Tanium from and against any and all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys’ fees and expenses) arising out of or relating to any claim the Licensed Software was exported or otherwise shipped or transported by Customer in violation of applicable laws, rules and regulations as described in this Section.

38. U.S. Government Rights. The Licensed Software is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of any of the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation, as applicable. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

39. Audit. During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer’s use of the Licensed Software (“Audit”). An Audit may include, without limitation, the inspection and review of computers or servers on which the Licensed Software has been installed or hosted, and records, procedures or business practices that relate to Customer’s performance under and compliance with the terms of this Agreement. Tanium (or an auditor retained by Tanium) shall provide Customer at least five (5) calendar days’ advance notice of an Audit. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer’s normal business hours. The cost of the Audit shall be borne by Tanium, unless the Audit reveals a breach of this Agreement by Customer, in which case any charge the vendor believes to be payable by the Government should be submitted individually to the contracting officer for adjudication through the holder of the GSA Schedule Contract.
41. **Force Majeure.** Except for Customer’s payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions. Excusable delays shall be governed by FAR 52.212-4(f).

Tanium and Customer have executed this Agreement to become effective as of the Effective Date.

**TANIUM**

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**CUSTOMER**

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**Exhibit A**

**TANIUM SUPPORT SERVICES TERMS AND CONDITIONS**

Tanium will provide Support Services to Customer according to the Agreement and Support Services Terms and Conditions set forth below. Capitalized terms not otherwise defined herein will have the meaning set forth in the Agreement.

1. **Definitions.**

2. “**Error**” means a failure of the Licensed Software to perform in substantial accordance with the Documentation.

3. **Errors.**

4. “**Fix**” means the repair or replacement of object or executable code versions of Licensed Software to remedy an Error.

5. “**Previous Sequential Release**” means at any time the release of Licensed Software that has been replaced by the then-current release of the same Licensed Software. Notwithstanding anything else, a Previous Sequential Release will be supported by Tanium only for a period of six (6) months after release of the then-current release.

6. “**Severity 1 Error**” means an Error that renders Licensed Software inoperative or causes Licensed Software to fail catastrophically.

7. “**Severity 2 Error**” means an Error that substantially degrades the performance of Licensed Software or materially restricts Customer’s use of the Licensed Software.

8. “**Severity 3 Error**” means an Error that causes only a minor impact on the performance of Licensed Software or Customer’s use of Licensed Software.

9. “**Support Services**” or “**Support**” means Tanium support services as described in Section 4 and/or Section 6, as applicable.

10. “**Support Request**” means a Customer request made to Tanium in accordance these Support Services Terms and Conditions.

11. “**Telephone Support**” means technical support telephone assistance provided by Tanium to the Technical Support Contact concerning the installation and use of the then-current release of Licensed Software and the Previous Sequential Release.

12. “**Technical Support Contact**” means the person designated by Customer that may contact Tanium for support.

13. “**Workaround**” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of Licensed Software.

14. **Term; Renewal Fees.** Unless otherwise set forth in a Schedule, the term of Support shall be one (1) year from the Support order date (the “Initial Support Term”). After the Initial Support Term, the Support shall automatically renew, and all applicable fees shall be due at the commencement of each successive one (1) year period (each a “Renewal Support Term”) unless either party notifies the other of cancellation of Support Services no later than forty-five (45) days prior to the end of such Support Term. The Initial Support Term and any Renewal Support
15. **Replacement Software.** If Tanium introduces a successor product ("Replacement Software") with substantially the same features and functionality as the original Licensed Software, and Customer has purchased and is entitled to Support Services for the original Licensed Software as of the date Tanium offers the Replacement Software to customers, then Customer shall be entitled to receive, upon request, the Replacement Software (without additional charge) and Support Services thereon. Customer must de-install and destroy the original Licensed Software.

16. **Support Services.**

   (a) **In General.** During the Support Term, Tanium shall provide Customer with (i) reasonable Support for Customer’s Technical Support Contact, (ii) Error Correction, and (iii) product updates that Tanium in its sole discretion makes generally available to its other similarly situated customers at no charge. Tanium’s Support is available Monday through Friday, 7 a.m. to 7 p.m. P.S.T., excluding Tanium holidays. Customer may designate up to a maximum of two (2) Technical Support Contacts with Tanium’s standard Support Services.

   (b) Tanium support can be contacted via three means:

      i. Customer may contact Tanium Support via Tanium Support Portal;
      ii. Customer may contact Tanium Support by emailing support@tanium.com; and
      iii. Customer may contact Tanium Support by calling Telephone Support (1 510 900 9443).

17. Tanium will make commercially reasonably efforts to assist Customer with the installation and configuration of the Licensed Software during the hours specified in Section 4.1 as part of Support Services, including, but not limited to:

   1. Specify hardware and software requirements; and 2. Walk-through Tanium’s pre-deployment and production deployment checklist(s), as applicable.

18. As conditions precedent: Customer will support remote delivery via teleconference or WebEx: Tanium will not request and Customer will not provide logical or physical access to Customer data or systems; Customer will assign qualified technical administrators and project management personnel to perform hands-on installation and configuration tasks; Customer will make a good-faith effort to ensure timeliness of deployment and Customer will provision alternate physical or virtual server(s) to permit initial agent deployment, if necessary; and Customer will ensure server(s) are in one location.

   (a) **Error Correction.** Tanium shall use commercially reasonable efforts to correct reproducible Errors reported by Customer in the current unmodified release of the Licensed Software, in accordance with the severity level reasonably assigned to such Error by Tanium.

   (b) **Severity 1 Error:** Tanium shall promptly commence the following procedures: (i) assign Tanium engineers to correct the Error; (ii) notify Tanium management that such Error has been reported and of steps being taken to correct such Error; (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix.

   (c) **Severity 2 Error:** Tanium shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Licensed Software maintenance update.

   (d) **Severity 3 Error:** Tanium may include a Fix for the Error in a later major release of the Licensed Software.

   (e) **Unsupported Failures.** If Tanium believes that a problem reported by Customer may not be due to an Error in the Licensed Software, Tanium will so notify Customer. At that time, Customer may (1) instruct Tanium to proceed with problem determination at Customer’s possible expense as set forth below or (2) instruct Tanium that Customer does not wish the problem pursued at Customer’s possible expense. If Customer requests that Tanium proceed with problem determination at Customer’s possible expense and Tanium determines that the problem was not due to an Error in the Licensed Software, Customer shall pay

19. Tanium, at Tanium’s then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. If Customer informs Tanium that it does not wish the problem pursued at Customer’s possible expense or if such determination requires effort in excess of Customer’s instructions, Tanium may, at its sole discretion, elect not to investigate the problem without liability therefor.

   (a) **Exclusions.** Notwithstanding the foregoing, Tanium shall have no obligation to provide Support for: (i) altered, damaged or modified Licensed Software or any portion of the Licensed Software incorporated with or into other software; (ii) Licensed Software that is not the then-current release or immediately Previous Sequential Release; or (iii) Licensed Software issues caused by Customer's negligence, abuse or misapplication, Customer's use of Licensed Software other than as specified in the Documentation, or by other factors beyond the control of Tanium; or (iv) Third Party Components or third party products, as applicable.

20. **Customer's Obligations.** Customer shall have the following obligations:

   (a) Customer will provide the location of its server(s) to Tanium.

   (b) All Support Requests shall be submitted by Customer to Tanium through Customer’s Technical Support Contact(s). Customer may change its designation on written notice to Tanium.

   (c) Customer shall provide Tanium with free and full access to the Licensed Software for purposes of rendering Support, including, where appropriate, dedicated modem access. Any time expended because of delays caused by Customer in providing Tanium with such...
access to the Licensed Software will be considered a change, and Tanium may request an adjustment to the price as a result through the schedule contract holder in accordance with the GSA Schedule Contract.

(d) Customer is responsible for (1) preparing and maintaining their systems and facilities in accordance with the specifications of the appropriate suppliers, (2) securing all required permits, inspections, and licenses, (3) providing adequate personnel to assist Tanium in carrying out its duties under this Agreement, (4) installing any Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Tanium, and (5) complying with all applicable state and Federal laws.

(e) Customer shall ensure the appropriate Customer personnel have been trained in the operation, support, and management of the Licensed Software.

(f) Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data.

(g) Customer shall install and implement Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Tanium within sixty (60) days of their general availability, unless a delay is mutually agreed upon in writing by the parties.

(h) Customer shall obtain at Customer's expense all additional equipment, latest level of third party software as designated by Tanium, and professional services required in response to Federal and state regulatory change, or relating to Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Tanium.

21. **Tanium Premium Support.** If Customer purchases Tanium Premium Support ("TPS"), Tanium will provide an expanded support offering over the duration of the TPS Support Term that, in addition to Tanium's standard Support Services, includes:

   (a) Priority Support Portal Notification – Technical Account Manager ("TAM") management team copied on each Support Request submitted by Customer to ensure immediate escalation.

   (b) Prioritization – TAMs assigned to Customer will prioritize Support Requests submitted by Customer.

   (c) Implementation Review and Advice - TAMs assigned to Customer will be available to assist with the deployment and configuration of the Licensed Software and provide ongoing advice to the Customer.

   (d) Remote Support – TAMs assigned to the Customer will provide remote support.

   (e) 24-Hour Support – For Severity 1 Error and Severity 2 Error Support Requests, 24-hour support is available via telephone, Support Portal or email.

   (f) Technical Support Contacts – Customer may designate up to a maximum of six (6) Technical Support Contacts with Tanium Premium Support.

   (g) 24-Hour Support Process.

22. During normal business hours, support for Severity 1 Error and Severity 2 Error Support Requests following the guidelines specified in the relevant Standard Support Services and Premium Support Services sections. During off-business hours, Support is extended through TPS.

   i. Support Portal – Support Requests made through the Support Portal during off hours are automatically assigned to active TAMs. For appropriate escalation, Support Requests must be flagged as "Severity 1 Error" or "Severity 2 Error" and must be filed through a user account where the domain of the configured email matches a customer entitled to TPS. In the event the Support Request is not engaged or opened in a timely fashion, active TAM managers are automatically notified.

   ii. Phone Support – Support Requests via telephone during off hours are sent to active TAMs. Only Support Requests that are verbally verified as "Severity 1 Error" or "Severity 2 Error" will be engaged and supported during off hours.

   iii. Support Portal-Email Support – Support Requests via email to support@tanium.com cannot be escalated with the appropriate "Severity 1 Error" or "Severity 2 Error" classification. However, once submitted, the Technical Support Contact or reporter of the Support Request may enter the Support Portal and directly update the Support Request to include the “Severity 1 Error” or “Severity 2 Error” classification to engage in the 24-hour support process accordingly.

   (b) Support Portal and directly update the Support Request to include the “Severity 1 Error” or “Severity 2 Error” classification to engage in the 24-hour support process accordingly.

   (c) Services beyond the scope of TPS may be made available through a separate mutually agreed services contract.
1. **Scope.** This Rider and the attached Tenable Public Sector LLC ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4900.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific Terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A - TENABLE MASTER AGREEMENT

This Attachment A - Tenable Master Agreement consists of the following:

(i) The main body of the Master Agreement which encompasses all of the general terms and conditions under which Tenable transacts business;

(ii) Schedule A (Software), which applies to the purchase of Tenable on-premises Software solutions (i.e., Tenable.io On-Prem, Security Center, Nessus Agents, Nessus Professional, etc.);

*Please note that Hosted Solutions do come with an on premises component

(iii) Schedule B (Hosted Services), which applies to Tenable’s SaaS solutions (i.e., Tenable.io); and

(iv) Schedule C (Professional Services), which applies to all training, installation and consulting services.

(v) TENABLE MASTER AGREEMENT

This Master Agreement (this “Agreement”) is made by and between Tenable (as defined below), and the Ordering Activity under GSA Schedule Contracts (“Customer” or “Ordering Activity”). Hereinafter, each of Tenable and Customer may be referred to collectively as the “Parties” or individually as a “Party.”

1. Definitions.

(a) “Affiliate” means any entity that controls, is controlled by, or is under common control with a Party. “Control” shall mean: (1) ownership (either directly or indirectly) of greater than fifty percent (50%) of the voting equity or other controlling equity of another entity; or (2) power of one entity to direct the management or policies of another entity, by contract or otherwise.

(b) “Documentation” means the then-current official user manuals and/or documentation for the Products available at docs.tenable.com.

(c) “Hosted Services” are a type of service offered through the Tenable.io (SaaS) platform and include Scans and access to and use of the hosted environment (the “Hosted Environment”).

(d) “Product(s)” means any of the products that Tenable offers, including Software, Hosted Services, Support Services and Professional Services.

(e) “Professional Services” means services purchased, including consulting services which are relevant to the implementation and configurations of Tenable Products as well as on-site or virtual training courses. Generally, Professional Services are defined either in a separate SOW or a Services Brief. Professional Services do not include the Hosted Services or Support Services.

(f) “Scan(s)” are a function performed by the Software and/or the Hosted Services on Scan Targets, which are conducted in order to provide data to Customer regarding its network security. “PCI Scans” are a specific type of Scan designed to assess compliance with the Payment Card Industry Data Security Standard. “Scan Data” is the resulting information created by the Scan. “Scan Target(s)” are the targets or subjects of a Scan.

(g) “Services Brief” means the document which outlines Tenable’s basic, pre-packaged, non-customized, installation, or training Professional Services offered under a Tenable SKU and which do not require a separate SOW. For the avoidance of doubt, Customer may purchase commercial off the shelf SKU-based Professional Services without executing a separate Statement of Work. A “SOW” or “Statement of Work” shall further describe Professional Services, the terms of which may be customized and which shall require execution by the Parties.

(h) “Software” means each software product made available by Tenable under this Agreement for download. Software includes patches, updates, improvements, additions, enhancements and other modifications or revised versions of the same that may be provided to Customer by Tenable from time to time.

(i) “Tenable” means Tenable Public Sector LLC, if Customer is an agency or instrumentality of the United States Government, a commercial entity operating predominately as a federal systems integrator for eventual sale or resale or for the benefit of the United States Government, or an agency or instrumentality of a State or local government within the United States (Tenable Public Sector LLC is a Delaware limited liability company having offices at 7021 Columbia Gateway Drive, Suite 500, Columbia, MD 21046)

2. Delivery.

(a) “Delivery and Installation” . Delivery of Tenable Products (“Delivery”) shall be deemed to occur on the date of availability for electronic download or electronic access. Tenable has no duty to provide installation services for Tenable Products unless installation services are purchased separately.

3. Term.

(a) Agreement Term. This Agreement shall commence upon the Effective Date and continue until terminated in accordance with the terms set forth herein.

(b) License Term. The “License Term” is the term of the license or subscription for Products as set forth in the applicable purchase order.

4. Products.

(a) Product-Specific Terms. Pursuant to this Agreement, Customer may receive the right to use various Products. Terms
related to Customer’s use of Software are described in Schedule A (Software). Terms related to Customer’s use of Hosted Services are described in Schedule B (Hosted Services). Terms related to the provision of Professional Services are described in Schedule C (Professional Services). For each Product, Customer will have the right to use the corresponding Documentation.

Licensing Model. Product licenses shall be in accordance with the terms of the applicable licensing model as set forth in the Documentation and the purchase order, which may include limitations on Scan Targets, License Term, the number of users, seats, licenses and/or types of modules licensed. Product licenses shall commence upon Delivery and shall be either perpetual or subscription in nature. If Customer exceeds the license restrictions, Tenable shall promptly invoice Customer for an upgraded license to allow for all actual or additional usage.

(c) Restrictions on Use. Customer shall not directly or indirectly: (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive, obtain or modify the source code of the Products; (ii) reproduce, modify, translate or create derivative works of all or any part of the Products; (iii) remove, alter or obscure any proprietary notice, labels, or marks on the Products; (iv) without Tenable’s prior written consent use the Products in a service bureau, application service provider or similar capacity; or (v) use the Products to gather information from Nessus Home scanners. Customer may not use the Products to manage or gather information from Scan Targets not owned or hosted by Customer.

(d) Intellectual Property in Products. This Agreement does not transfer to Customer any title to or any ownership right or interest in the Products. Any rights in the Products not expressly granted in this Agreement are reserved by Tenable. If Customer provides Tenable with any comments, suggestions, or other feedback regarding the Product, Customer hereby assigns to Tenable all right, title and interest in and to such feedback. Tenable acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

(e) Customer System Requirements. In order to use the Products, Customer must meet or exceed the specifications found in the Tenable General Requirements document.

(f) Product Features. Tenable reserves the right to withdraw features from future versions of the Products provided that: (i) the core functionality of the affected Product remains the same; or (ii) Customer is offered access to a product or service providing materially similar functionality as the functionality removed from the affected Product. The preceding remedies under this Section 4(f) are the sole remedies available if Tenable withdraws features from the Products.

(g) Telemetry. Customer agrees to provide certain necessary Scan information, which may include the number of Scan Targets managed with the Product for billing purposes, behavioral attributes such as whether or not certain features in the Product are utilized, or other relevant information (“Technical Data”). Tenable may use Technical Data for reasonable business purposes, including product support, license validation and research and development. Tenable agrees to only disclose Technical Data which has been properly anonymized.

5. Support. Support Services. Tenable shall provide Customer with support services (the “Support Services”) in accordance with Tenable’s then current Technical Support Plan and consistent with Tenable’s Product Lifecycle Policy, each of which is available at http://static.tenable.com/prod_docs/tenable_slas.html (or a successor location). The Support Services include bug fixes, updates (including new vulnerability plug-ins), or enhancements that Tenable makes generally available to users of the Products. The Support Services also include the provision of new minor (Example: 1.1.x to 1.2.x, etc.) and major version releases of the Products (Example: 1.x to 2.x, etc.).

(b) Support Fees. Standard Support Services for Products licensed for a finite License Term will be provided at no additional charge beyond the license fee for the duration of the License Term. Support Services for Products licensed on a perpetual basis must be purchased separately. In all cases, premium support may be purchased at an additional charge. If during the course of a perpetual license Customer terminates or fails to renew the Support Services, Customer may, at any time during the term of this Agreement, request that Tenable reinstate the Support Services provided that Customer pays for the lapsed Support Services in an amount equal to the total fees Customer would have paid for the Support Services between the time Customer’s Support Services lapsed and the then-current date.

6. Confidentiality. (a) Definition. "Confidential Information" means information learned or disclosed by a Party under this Agreement that should reasonably be assumed to be confidential or proprietary, including the Products. Confidential Information will remain the property of the disclosing Party, and the receiving Party will not be deemed by virtue of this Agreement or any access to the Confidential Information to have acquired any right, title or interest in or to the Confidential Information.

(b) Obligations. Each Party agrees to use the Confidential Information in connection with this Agreement or a purchase hereunder. The receiving Party agrees to hold the disclosing Party's Confidential Information confidential and to use at least the same level of protection against unauthorized disclosure or use as the receiving Party normally uses to protect its own information of a similar character, but in no event, less than a reasonable degree of care. Each Party may share Confidential Information with its Affiliates or authorized contractors in the performance of its duties under this Agreement; provided, however, each Party shall be responsible to ensure that such Affiliate or authorized contractors are bound by obligations of confidentiality at least as stringent as those set forth in this Agreement.

(c) Exclusions. Confidential Information shall not include information that: (i) is already known to the receiving Party free of any confidentiality obligation; (ii) is or becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received by the receiving Party from a third party without any restriction or confidentiality; or (iv) is independently developed by the receiving Party without reference to the Confidential Information. Furthermore, if Customer intentionally or unintentionally requests or performs scans on third party Scan Targets, Customer agrees that Tenable may provide all relevant information to the owner of the Scan Targets of such unlawful or impermissible scanning as well as to relevant legal authorities, and such disclosure shall not be considered a breach of confidentiality.

(d) Information Not to be Disclosed. The Parties agree not to disclose to each other any sensitive, non-public, personally identifiable information (such as social security numbers, personal credit card information or health care data, etc.) which may be the subject of any data privacy regulations as well as any Personal Data of an EU Data Subject as such terms are defined under the European Union General Data Protection Regulation (together, hereinafter, "PII"). Tenable does not require the transmission or processing of any such PII in order to perform its duties under this Agreement or sell any Products hereunder. If Customer inadvertently or unintentionally discloses any PII to Tenable, Customer shall identify to Tenable that it has disclosed PII and Tenable shall promptly return and/or destroy such PII.

(e) Legal Disclosure; Remedies. The receiving Party may disclose Confidential Information if required to do so by law or to prevent or limit such disclosure. If required hereunder, the receiving Party shall furnish only that portion of the Confidential Information disclosure of which is legally required. The receiving Party will notify the disclosing Party promptly of any unauthorized use or disclosure of the disclosing Party's Confidential Information. Tenable recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.
7. Representations and Warranties; Disclaimer.
   (a) Warranty of Authority. The Parties hereby represent and warrant that they have the full power and authority to enter into this Agreement.
   (b) Products. Product warranties and associated warranty periods are set forth in the relevant Schedules attached hereto.
   (c) Antivirus Warranty. Tenable represents it has taken commercially reasonable efforts to ensure that the Products, at the time of Delivery, are free from any known and undisclosed virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Products to become inoperable or incapable of being used in the manner for which it was designed or in accordance with the Documentation.
   (d) Warranty Disclaimer. The express warranties for products and services are set forth in the applicable Schedules attached hereto. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND TO THE GREATEST EXTENT PERMITTED BY LAW, TENABLE OFFERS ITS PRODUCTS "AS-IS" AND MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, INTEGRATION, PERFORMANCE AND ACCURACY, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE MADE TO CUSTOMER FOR CUSTOMER'S BENEFIT ONLY. CUSTOMER'S USE OF THE PRODUCTS IS AT CUSTOMER'S OWN RISK. CUSTOMER UNDERSTANDS THAT ASSESSING NETWORK SECURITY IS A COMPLEX PROCEDURE, AND TENABLE DOES NOT GUARANTEE THAT THE RESULTS OF THE PRODUCTS WILL BE ERROR-FREE OR PROVIDE A COMPLETE AND ACCURATE PICTURE OF CUSTOMER'S SECURITY FLAWS, AND CUSTOMER AGREES NOT TO RELY SOLELY ON SUCH PRODUCTS IN DEVELOPING ITS SECURITY STRATEGY. CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS MAY RESULT IN LOSS OF SERVICE OR HAVE OTHER IMPACTS TO NETWORKS, ASSETS OR COMPUTERS (INCLUDING MODIFICATION OF SCAN TARGETS), AND CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGES RELATING TO SUCH LOSS OR IMPACT.

8. Reserved.

   (a) Indemnification Obligations.
      (i) By Tenable. Tenable shall (at its sole cost and expense): (i) defend and/or settle on behalf of Customer (including Customer's officers, directors, employees, representatives and agents); and (ii) indemnify Customer for, any third party claims brought against Customer based upon a claim that Customer's use of the Products in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights in a jurisdiction which is signatory to the Berne Convention.
      (b) In Case of Infringement. If Customer's use of the Products is, or in Tenable's opinion is likely to be, the subject of an infringement claim, Tenable may, in its sole discretion and expense: (i) modify or replace the infringing Products as necessary to avoid infringement, provided that the replacement Products are substantially similar in functionality; (ii) procure the right for Customer to continue using the infringing Products; or (iii) terminate this Agreement and, upon Customer's return or certified destruction of the infringing Product, provide Customer a pro-rata refund calculated as follows: (x) for infringing Products licensed on a subscription basis, the refund shall consist of any prepaid but unused fees for the remainder of the applicable License Term; or (y) for infringing Software licensed on a perpetual basis, the refund shall consist of a straight line depreciation of the license fee based on a three (3) year useful life. This Section 9 sets forth Tenable's sole and exclusive liability and Customer's sole and exclusive remedy with respect to any claim of intellectual property infringement.
   (c) Exclusions. Tenable shall have no liability with respect to a third party intellectual property infringement claim arising out of: (i) modifications of the Product made to conform with Customer's specifications; (ii) modifications of the Product made by anyone other than Tenable or a Tenable authorized third party; (iii) Customer's use of the Product in combination with other products or services not provided by Tenable; (iv) Customer's failure to use any updated versions of the Product made available by Tenable; or (v) Customer's use of the Product in a manner not permitted by this Agreement or otherwise not in accordance with the Documentation.
   (d) Requirements. Tenable shall only be responsible for the indemnification obligations set forth in this Section 9 if the Customer: (i) provides Tenable prompt written notice of such action or claim; (ii) gives Tenable the right to control and direct the investigation, defense, and/or settlement of such action or claim in accordance with and to the extent permitted under 28 U.S.C. § 516; (iii) reasonably cooperates with Tenable in the defense of such a claim (at Tenable's expense); and (iv) is not in breach of this Agreement. Nothing herein shall prevent Customer from engaging in defense of any such claim with its own legal representation, provided that this does not materially prejudice Tenable's defense. Tenable may not settle any claim on behalf of Customer without obtaining Customer's prior written consent; provided, however, Tenable shall not be required to obtain consent to settle a claim which settlement consists solely of: (x) discontinued use of infringing Products and/or (y) the payment of money for which Tenable has a duty to indemnify.

10. Legal Compliance.
    (a) Generally. The Products are intended solely for lawful purposes and use. Each party agrees to perform their respective obligations in a manner that complies with all applicable national, federal, state and local laws, statutes, ordinances, regulations and codes ("Applicable Laws") including, without limitation, the Computer Fraud and Abuse Act (CFAA), 18 USC Sec. 1030.
    (b) Exporter of Record. Applicable Laws include U.S. export laws (including the International Traffic in Arms Regulation (ITAR), 22 CFR 120-130, and the Export Administration Regulation (EAR), 15 CFR Parts 730 et seq.). Customer agrees that it will be the exporter of record any time it causes the Products to be accessed outside the United States or by a national of any country other than the United States. The parties further agree to comply with sanctions administered by the Department of the Treasury's Office of Foreign Assets Control and shall not engage in prohibited trade to persons or entities on the Specially Designated Nationals list.

    (a) This Agreement shall be governed in all respects by the Federal laws of the United States. The Parties agree that: (i) no aspect or provision of the Uniform Computer Information Transactions Act shall apply to this Agreement; and (ii) this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.

12. Other Legal Clauses.
    (a) Third Parties. Customer may permit a third party ("Customer's Agent") to use the Products to perform security services for and on behalf of Customer but solely for Customer's benefit and solely for Customer's internal business purposes. Customer shall be fully responsible for Customer's Agent's use of the Products including liability for any breaches of the Agreement or use beyond the licensed quantities set forth in the Ordering Document. If Customer elects to utilize a Customer's Agent to perform Scans on its behalf, then only Customer's Agent
(and not Customer) will be permitted to contact Tenable Support Services. Tenable shall have the right to withdraw its consent to the use of any Customer's Agent in its reasonable discretion.

(b) Notices. Any legal notices or other communication pursuant to this Agreement must be in writing, in English, and will be deemed to have been duly given when delivered if delivered personally or sent by recognized overnight express courier. All notices to Tenable must be sent to the address described in this Agreement to the attention of the Legal Department (unless otherwise specified by Tenable). All notices to Customer shall be at the physical address referenced in this Agreement (or otherwise provided to Tenable). Tenable may provide notice with regard to Products via the email address Customer provided during Product registration and Customer hereby consents to receive such communications from Tenable in an electronic form.

(c) Assignment. Neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which will not be unreasonably withheld.

13. Reserved.


This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase order, constitutes the entire agreement between the Parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement. No Customer document or purchase order shall modify or supersede this Agreement, unless expressly agreed to in writing by both parties. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. If any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties. Section headings are for convenience only and shall not be considered in the interpretation of this Agreement. Customer agrees that Tenable may use Customer's name or logo in a customer list. Customer may not use Tenable’s name or logo without prior written consent and in accordance with Tenable’s guidelines. No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement. The Parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. This Agreement is not intended nor will it be interpreted to confer any benefit, right or privilege in any person or entity not a party to this Agreement. Any party who is not a party to this Agreement has no right under any law to enforce any term of this Agreement. Any provision of this Agreement that imposes or contemplates continuing obligations on a party and any section which by its nature is intended to survive will survive the expiration or termination of this Agreement, including Sections 3, 4, 9 and 11.

15. Government Entities. This Section 15 shall only apply to Government Customers, as defined below.

If Customer is an agency or instrumentality of a sovereign government (a "Government Customer"), all Government Customer end users acquire the rights to use and/or access the Products and or Services with only those rights set forth herein (consistent with 48 C.F.R. 12.212). The terms and conditions of this Agreement govern Government Customer's use and disclosure of the Products and supersedes any conflicting terms and conditions that may be applicable through the Government Customer's procurement regulations. If this Agreement fails to meet the Government Customer's needs or is inconsistent in any way with federal law, the government must return the Product, unused, to Tenable. If Customer is prohibited by law, regulation, or relevant attorney general opinion from agreeing to any clause of this Agreement (collectively, "Restrictions"), the Agreement shall be modified to the extent required under such Restrictions. Each of the components that constitute the Product is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212.

SCHEDULE A: SOFTWARE

This Schedule for Tenable Software (this “Schedule”) is subject to and made part of the Agreement.

1. General. This Schedule governs Customer’s license of Software.

2. License; Right to Use. Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable license to use the Software (in object code form only) solely for Customer’s own internal business purposes. Customer’s right to install such Software is limited to use with the computers or machines for which the Software is registered for use. Customer is permitted to make one copy of the Software for backup or archival purposes.

3. Warranty. Tenable warrants that the Software shall materially conform to the Documentation for a period of sixty (60) days after Delivery. Customer’s sole and exclusive remedy for breach of this warranty shall be for Tenable to, at its sole option: (i) use commercially reasonable efforts to modify or correct the Software such that in all material respects it conforms to the functionality described in the Documentation; or (ii) if Tenable is unable to restore such functionality within a reasonable period of time, Customer shall be entitled to a refund for the non-conforming Software.

4. Open Source and Third Party Software. Any code or other intellectual property included as part of the Software that was licensed to Tenable by third parties that is not marked as copyrighted by Tenable is subject to other license terms that are specified in the Documentation available on Tenable’s website at https://docs.tenable.com/licenseddeclarations/ (or a successor location). Customer agrees to be bound by such other license terms.

5. Audit Rights. Subject to applicable Government security requirements, Tenable may, by itself or through a third party independent auditor, audit Customer’s usage of the Software to confirm compliance with this Agreement or the applicable Ordering Document. Tenable shall: (i) provide Customer with reasonable advance notice of the audit; (ii) not request such audit more than once per year; and (iii) not unreasonably interfere with Customer’s business activities when conducting the audit.

SCHEDULE B: HOSTED SERVICES

This Schedule for Tenable Hosted Services (this “Schedule”) is subject to and made part of the Agreement.

1. General. This Schedule governs Customer’s purchase and use of the Hosted Services.
2. **License; Right to Use.** Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable right to access the Hosted Environment and use those modules of the Hosted Services set forth on a valid Ordering Document solely for Customer’s own internal business purposes.

3. **Warranty.** Tenable warrants that the Hosted Services will materially comply with the functionality described in the Documentation. Customer’s sole and exclusive remedy for breach of this warranty shall be for Tenable to use commercially reasonable efforts to modify the Hosted Services to provide in all material respects the functionality described in the Documentation. If Tenable is unable to restore such functionality within sixty (60) days, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of any prepaid but unused fees for the nonconforming Hosted Services. Tenable shall have no obligation with respect to a warranty claim hereunder unless Customer notifies Tenable of such claim within thirty (30) days of the date the underlying condition first arose. This warranty shall only apply if the applicable Hosted Service has been utilized in accordance with the Agreement and the Documentation.

4. **Acknowledgements.** Customer authorizes Tenable to perform the Scans, including accessing the Scan Targets in the context of the Scans. Customer understands and acknowledges that the Scans may originate or appear to originate from a Tenable URL which could cause Customer (or the owner of the Scan Targets) to believe they are under attack. Customer agrees not to pursue any claims against Tenable as a result of any access to Scan Targets when such access was made in connection with an authorized Scan unless such a claim is based on the gross negligence or willful misconduct of Tenable.

5. **Usage Requirements.** Customer must provide current and accurate information in all submissions made in connection with the Hosted Services, including registration information and the location of the Scan Targets to be Scanned. Tenable may, in its reasonable discretion, temporarily suspend access of certain users of the Hosted Services. Customer agrees to safeguard and maintain the confidentiality of all user names and passwords. Customer further agrees to use best efforts to ensure that no unauthorized parties have access to the Hosted Services through Customer’s account and/or log-in credentials. Customer will promptly notify Tenable of any unauthorized access of which Customer is aware or reasonably suspects. Customer is responsible for compliance with this Agreement and all use of the Hosted Services through Customer’s account.

6. **PCI Scans.** Tenable makes no guarantee that a successful completion of a PCI Scan will make Customer compliant with the Payment Card Industry Data Security Standard. Tenable grants Customer a non-transferable, non-sublicensable right, which such Professional Services were purchased and completed within six (6) months of the of the Ordering Document. Tenable shall have no obligation with respect to a warranty claim hereunder unless Customer notifies Tenable of such claim within thirty (30) days of the date the underlying condition first arose. This warranty shall only apply if the applicable Hosted Service has been utilized in accordance with the Agreement and the Documentation.

7. **Data Retention Policy.** Tenable will maintain Customer Scan data stored in the Hosted Environment for a period of not less than one year from the scan date. Customer acknowledges that Tenable is in no way responsible for any of Customer’s data retention compliance requirements. Tenable’s data retention policy with respect to PCI Scans will match then-current requirements set forth by the PCI Security Standards Council.

8. **Service Level Agreement.** Tenable commits to make access to the Hosted Environment available in accordance with Tenable’s then current service level agreement, available at http://static.tenable.com/prod_docs/Service_Level_Commitment.pdf (or a successor location).

**SCHEDULE C: PROFESSIONAL SERVICES**

This Schedule for Tenable Professional Services is subject to and made part of the Agreement.

1. **General.** The Parties may agree, from time to time, on the purchase and sale of Tenable Professional Services. Professional Services shall be as further described in a separate SOW or Services Brief. No SOW shall be binding upon the Parties until it has been executed by both Parties. Except as otherwise agreed to by the Parties in writing, all Services Briefs or signed SOWs will be governed by this Agreement. In the event of inconsistency between the Agreement and a signed SOW, the signed SOW shall govern.

2. **Type of Services.** Tenable offers a range of Professional Services; provided, however, unless otherwise agreed upon in writing, Tenable does not offer creation of custom intellectual property. Tenable is not obligated to provide any Professional Services except as mutually agreed in a Services Brief or SOW.

3. **Deliverables.** “Deliverable(s)” means the reports, analysis, codes, scripts slides, documents, examples and other written materials or work results provided as part of the Professional Services.

4. **Intellectual Property Rights.**
   (a) Grant of License in Deliverables. Tenable grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Agreement or SOW) perpetual right to use, copy and create derivative works from the Deliverables (without the right to sublicense) for Customer’s internal business operations, as contemplated by the applicable SOW or Services Brief.
   (b) Reservation of Rights. Except for the rights expressly granted herein to Customer, Tenable expressly reserve all other rights in and to the Professional Services and Deliverables. Notwithstanding anything to the contrary in this Schedule, nothing shall prevent Tenable from providing similar Professional Services to other customers and nothing in this Schedule shall be construed to provide any intellectual property rights whatsoever in the Products (or any modifications or enhancements thereto) that Tenable develops or makes generally available for sale to its customers.
   (c) Pre-Existing Materials. Any pre-existing materials, proprietary item or intellectual property rights of either Party which is disclosed or used in performing the Professional Services shall remain fully vested in such Party. Nothing in this Schedule shall transfer any rights whatsoever in Tenable’s Products. Customer hereby grants to Tenable the intellectual property rights (if any) required for Tenable to perform the Professional Services.

5. **Warranty.** Tenable warrants that all Professional Services shall be performed in a professional manner and in accordance with industry standards. Tenable further warrants for a period of ten (10) days from the service completion date that the Professional Services shall materially conform to with the applicable SOW or Services Brief. If Tenable provides written notice of a non-conformity during this warranty period, Tenable shall promptly confirm the non-conformity and upon confirmation, Tenable’s entire liability and Customer’s exclusive remedy shall be for Tenable to use commercially reasonable efforts to re-perform the Professional Services within a reasonable amount of time. If Tenable is unable to reperform the Professional Services, then Tenable may elect to refund amounts paid by Customer for the non-conforming Professional Services.

6. **Scheduling; Cancellation.** Professional Services must be scheduled within three (3) months of the date of the Ordering Document under which such Professional Services were purchased and completed within six (6) months of the of the Ordering Document. Tenable shall have no obligation to perform the Professional Services if Customer or Customer’s designated attendees do not attend a scheduled training session or cancel a Professional Services engagement without providing proper notice. Customer must provide Tenable at least ten (10) business days’ notice to reschedule any Professional Services.
7. **Customer Responsibilities.** For Professional Services occurring on Customer’s site, Tenable agrees to comply with applicable and reasonable security procedures provided Customer provides Tenable with such written procedures in advance. Some of the Professional Services may require Customer to have specialized knowledge or meet particular software or hardware requirements (for example, appropriate computers or appliances, stable Internet connection or up-to-date web browsers or operating system, etc.). If technical issues arise during the Professional Services, Tenable will use commercially reasonable efforts to resolve such issues, but will have no liability based on Customer's failure to meet technical requirements.

8. **Changes.** Either party may request that a change be made to the Professional Services. Tenable reserves the right to charge a fee for any material changes to the Professional Services. No changes shall be binding unless executed by both Parties.

9. **Non-Solicitation.** During the term that Professional Services are being provided and for a period of one (1) year after their completion, Customers will not, either directly or indirectly, solicit for employment any person employed by Tenable or any of its Affiliates that have provided Customer Professional Services under this Agreement. For the avoidance of doubt, this restriction shall not prevent Customer from hiring based on a response to Customer’s advertising in good faith to the general public a position or vacancy to which an employee or worker of Tenable responds, provided that no such advertisement shall be intended to specifically target Tenable personnel.
### Tenable.sc & Tenable.io SKUs

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Agent SKUs

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1. **Scope.** This Rider and the attached Thycotic Software ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all results.

The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

3. **Contracting Parties.** The GSA Customer (“Licensor”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

4. **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

5. **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.


7. **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

8. **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

9. **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a
Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1.1 Subject to the terms and conditions of this Agreement and the applicable ordering document, Thycotic hereby grants to Ordering Activity a perpetual, non-exclusive, royalty-free license to use the Product for its operational purposes. The Product is available immediately on installation. The use of the Product is available to the number of users and edition set forth on the applicable ordering document issued by Ordering Activity. The rights and licenses granted under this Agreement may be used by or on behalf of any Affiliate of Ordering Activity; provided that the number of users and edition of any license is not exceeded. "Affiliate" means, with respect to the applicable party, any corporation, company, partnership, trust, sole proprietorship or other entity or individual which: (a) is owned, controlled or managed by such party, in whole or in part (b) owns, controls or manages such party, in whole or in part, or (c) is under common ownership or control with such party, in whole or in part.

1.2 Ordering Activity acknowledges and agrees that the Product is subject to the export control laws and regulations of the United States ("Export Controls"), including the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Control, and agrees to the extent applicable, to comply with the Export Controls. Ordering Activity further agrees that (i) Ordering Activity is not an entity restricted or otherwise prohibited by the Export Controls; (ii) the Product will not be exported, re-exported or otherwise transferred to any country subject to a United States trade embargo, or to a national or resident thereof; and (iii) the Product will not be exported, re-exported, or transferred to an end-user engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

1.3 Upon Ordering Activity’s issuance of an ordering document for the applicable support fees, Thycotic shall provide telephone, e-mail, and remote assistance support services for the Product ("Support"). Support shall be available Monday through Friday between the hours of 7am - 7pm US Eastern Time ("Business Hours") excluding major US Public Holidays. All Support requests shall receive a response within twenty-four (24) hours during Business Hours. Support shall entitle Ordering Activity to receive all new releases (both minor and major) of the Product ("Upgrades") which Upgrades on receipt by Ordering Activity or its Affiliates shall automatically be licensed to Ordering Activity and its Affiliates under the same terms as the Product.

2. Account responsibility

Ordering Activity is responsible for Ordering Activity’s use of the Product. Ordering Activity is responsible for maintaining the confidentiality of any password for the Product provided to Ordering Activity.

3. Reserved.

4. Limited Warranty

Thycotic represents and warrants to Ordering Activity that:

4.1 The Product and Support shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other governmental requirements;

4.2 The Product will perform in compliance with applicable performance specifications set forth in its documentation for a period of one (1) year following the date of Ordering Activity’s purchase of the Product pursuant to Section 1. If new Upgrades of the Product are provided to Ordering Activity, the foregoing representations and warranties in the immediately preceding sentence shall apply to such Upgrades for one (1) year following the date of Ordering Activity’s receipt of the Upgrades;

4.3 The Product, including Upgrades, does not and shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware;

4.4 To the extent that the Product contains any third party software ("Third Party Software"), Thycotic has the right to grant Ordering Activity and its Affiliates the license to use the Third Party Software with the Product pursuant to the terms and conditions of this Agreement without violating the rights of any third party.

4.5 All Support and any other services (collectively, "Services") shall be performed in a professional manner and with the standard of care and diligence in the industry (but no less than a reasonable standard of care and diligence), as well as industry standards (but no less than reasonable standards) of documentation, methodology, and control.

4.6 If the Product or Services do not comply with any of the representations and warranties set forth above, Thycotic shall, at its own expense, promptly correct the Product and/or Service, as applicable, so that it complies with all representations and warranties or replace the Product and/or Service with comparable new software or a new Service that complies with all representations and warranties. Where it is impractical to perform one of the foregoing remedies (including, without limitation, if Thycotic fails to perform such remedies within thirty (30) days of Ordering Activity’s delivery of written notice to Thycotic), Ordering Activity may terminate this Agreement upon delivery of written notice to Thycotic. Upon such termination, Thycotic shall refund the fees paid for the Product, and refund the applicable fees for the unused term of any Services and for Services not delivered in accordance with this Agreement (including any Services that do not comply with applicable representations and warranties),

4.7 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THE PRODUCT AND SERVICES ARE PROVIDED TO ORDERING ACTIVITY ON AN “AS-IS”, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS WITHOUT ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

5. Reserved.
6. Reserved.
7. Reserved.
8. Reserved.
9. Reserved.
10. Service Level Agreement (SLA)

10.1 Thycotic will use commercially reasonable efforts to provide Support as per the availability defined in Section 1. In the event Thycotic does not provide Support as defined in Section 1, the Ordering Activity will be eligible to receive a Service Credit as described below.

Definitions
- “Service Year” is the preceding 365 days from the date of an SLA claim.
- “Unavailable” means that the Service was not available to Ordering Activity or its Affiliates due to Support being unavailable or non-responsive.
- The “Eligible Credit Period” is a single month, and refers to the monthly billing cycle in which the most recent Unavailable event included in the SLA claim occurred.
- A “Service Credit” is a dollar credit, calculated as set forth below, that Thycotic may credit back to Ordering Activity.

10.2 Service Commitments and Service Credits
If Support is Unavailable for the Ordering Activity and its Affiliates during the Service Year, then that Ordering Activity is eligible to receive a Service Credit equal to 10% of the License fees paid for Support for the Service Year. To file a claim, the Ordering Activity does not have to have wait 365 days from the day they started using the service or 365 days from their last successful claim. The Ordering Activity can file a claim any time an Unavailable event occurs. Thycotic will apply any Service Credits only against future payments otherwise due from Ordering Activity. Service Credits shall not entitle Ordering Activity to any refund or other payment from Thycotic. A Service Credit will be applicable and issued only if the credit amount for the applicable Service Year is greater than one dollar ($1 USD). Service Credits may not be transferred or applied to any other customer. Unless otherwise provided in the Agreement, the Ordering Activity’s sole and exclusive remedy for any Unavailable Support is the receipt of a Service Credit or termination of Ordering Activity use of the Product.

10.3 Credit Request and Payment Procedures
To receive a Service Credit, Ordering Activity must submit a request by sending an e-mail message to sales@thycotic.com. To be eligible, the credit request must (i) include Ordering Activity domain name in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each “Unavailable” incident; (iii) include any call or email logs (any confidential or sensitive information in these logs should be removed or replaced with asterisks); and (iv) be received by Thycotic within thirty (30) business days of the last reported incident in the SLA claim. If the Unavailable event is confirmed by Thycotic, which confirmation will not be unreasonably withheld or delayed, then Thycotic will issue the Service Credit to Ordering Activity on the next billing cycle following the Service Year in which the request occurred. Ordering Activity’s failure to provide the request and other information as required above will disqualify Ordering Activity from receiving a Service Credit.

10.4 SLA Exclusions
The Service Commitment does not apply to any Unavailability, suspension or termination of Support: (i) that result from non-adherence to the terms of the Agreement by Ordering Activity or its Affiliates; (ii) caused by factors outside of Thycotic’s reasonable control, including any force majeure event or Internet access or related problems; provided, that, if any force majeure event occurs that affects the performance of Thycotic under this Agreement, Thycotic will give prompt written notice to Ordering Activity and use commercially reasonable best efforts to avoid or remove the cause of non-performance and to perform with dispatch once the interfering conditions created by the force majeure event are removed or cease. (iii) that result from any actions or inactions of Ordering Activity, its Affiliates or any third party; (iv) that result from Ordering Activity equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Thycotic’s direct control); (v) arising from Thycotic’s suspension and termination of Ordering Activity’s right to use Support in accordance with the Agreement (collectively, the “SLA Exclusions”). If availability is impacted by factors other than those explicitly listed in this Agreement, Thycotic may issue a Service Credit considering such factors in Thycotic’s sole discretion.

11. Reserved.
12. Indemnification

12.1 Subject to 28 U.S.C. § 516, Thycotic shall defend, indemnify and hold Ordering Activity and its Affiliates, and the directors, officers, employees and agents of each (collectively, “Ordering Activity Indemnitees”), harmless from and against any demands, claims and actions by third parties, and all liabilities, judgments, damages, fines, penalties, costs and expenses (including actual and reasonable attorneys’ fees) incurred in connection therewith (individually and collectively, “Liabilities”), resulting from (or alleged to result from) (a) any criminal or other intentional wrongful act or omission or any act or omission of gross negligence or willful misconduct of Thycotic or its employees, agents or subcontractors; or (b) the Product in the form provided violating or infringing any copyright, trademark, patent, trade secret, data privacy right or any other proprietary rights of any third person valid under the laws of the United States or any country in which the Product is used (“Intellectual Property Rights”). Thycotic is not obligated under this section to the extent any third party claim arises from a Ordering Activity Indemnitee’s breach of this Agreement or (with respect to claims related to clause (b) of this section) use of the Product in combination with any software, data, process or technology not supplied by Thycotic (where there would be no claim, but for such combination), or a Ordering Activity Indemnitee’s negligence or willful misconduct.

12.2 Reserved.
12.3 Indemnification Procedure. The Ordering Activity must (i) give Thycotic prompt written notice of any such claim to avoid actual prejudice provided that the failure to notify Thycotic shall not relieve Thycotic from any liability Thycotic may have to the Ordering Activity hereunder, except to the extent such failure is prejudicial to the defense of any claims; (ii) afford Thycotic control over the defense of any such claim so long as Thycotic promptly undertakes such defense to avoid actual prejudice to the Ordering Activity with competent counsel reasonably acceptable to Ordering Activity, and under any settlement, Thycotic shall not be entitled to commit the Ordering Activity to the payment of any monetary amounts that will not be paid by Thycotic; (iii) Thycotic shall not enter into any settlement or compromise, or consent to the entry of any judgment, that includes, or in connection with which the Ordering Activity would be required to incur or admit liability, obligation, or culpability without the Ordering Activity’s advance written consent; and (iv) the Ordering Activity provides reasonable cooperation to Thycotic in the defense of any such claim, at the cost and expense of Thycotic. If Thycotic fails to assume the defense of a claim subject to indemnification under this Agreement within 15 days of the Ordering Activity’s notice thereof, or if within such 15-day period actual prejudice may occur if action is not taken, then at Thycotic’s cost and expense, the Ordering Activity may undertake the defense or settlement of such claim. Notwithstanding any other provision herein or otherwise to the contrary, the obligations of Thycotic and Ordering Activity under this Section 12 shall survive termination of this Agreement indefinitely and shall be without dollar limit.

12.4 Intellectual Property Rights Claims. In addition to, and not in limitation of the foregoing, if the Product becomes, or in Thycotic’s reasonable opinion based on the advice of experienced and knowledgeable legal counsel, is likely to become, the subject of a claim that the Product violates or infringes any Intellectual Property Rights, Thycotic may, at its option and expense, either: (i) procure for Ordering Activity the right to continue exercising its rights hereunder to the Product or (ii) replace or modify the Product so that it becomes noninfringing but remains functionally equivalent. If neither of the foregoing alternatives provide an adequate remedy in Thycotic’s or Ordering Activity’s reasonable judgment, then Ordering Activity may terminate all or any part of the use by Ordering Activity of the Product and Thycotic will equitably refund the prorated amounts paid by Ordering Activity for the terminated use of the Product that Ordering Activity will no longer receive under this Agreement.

13. Reserved.

14. Reserved.

ADDITIONAL PRODUCT DESCRIPTIONS:
The following line items are priced via a calculation as outlined below:

<table>
<thead>
<tr>
<th>PART NUMBER</th>
<th>DESCRIPTION</th>
<th>ADDITIONAL DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SS-SPT-1YR</td>
<td>Secret Server Installed - Support - 1 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-2YR</td>
<td>Secret Server Installed - Support - 2 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 2 year prepaid maintenance support renewals, multiply full year support cost result by 2. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-3YR</td>
<td>Secret Server Installed - Support - 3 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 3 year prepaid maintenance support renewals, multiply full year support cost result by 2.7. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-4YR</td>
<td>Secret Server Installed - Support - 4 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 4 year prepaid maintenance support renewals, multiply full year support cost result by 3.5. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-5YR</td>
<td>Secret Server Installed - Support - 5 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 5 year prepaid maintenance support renewals, multiply full year support cost result by 4.25. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-ENT</td>
<td>Secret Server Install-Sub-Enterprise</td>
<td>Yearly subscription for the ENT edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the ENT subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.</td>
</tr>
<tr>
<td>Plan Code</td>
<td>Description</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>SS-SUB-ETP</td>
<td>Secret Server Install-Sub-Enterprise Plus</td>
<td>Yearly subscription for the ETP edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the ETP subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.</td>
</tr>
<tr>
<td>SS-SUB-PRO</td>
<td>Secret Server Install-Sub-Professional</td>
<td>Yearly subscription for the PRO edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the PRO subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.</td>
</tr>
<tr>
<td>SS-SUB-USR</td>
<td>Secret Server Installed - Sub - User Count</td>
<td>Yearly subscription for the user count in all Secret Server Installed Subscriptions. Enter the number of users in the quantity field. User Price is included in the edition price calculation.</td>
</tr>
</tbody>
</table>
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached TIBCO Software Federal, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

c) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

e) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considered the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**TIBCO SOFTWARE FEDERAL, INC.**

**TIBCO SOFTWARE FEDERAL, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**END USER LICENSE AGREEMENT FOR U.S. FEDERAL GOVERNMENT BUSINESS (“AGREEMENT”)**

**PLEASE READ CAREFULLY: THIS AGREEMENT IS PROVIDED PURSUANT TO SECTION 12.212 OF THE FEDERAL ACQUISITION REGULATION (FAR) AND IS APPLICABLE TO TIBCO SOFTWARE LICENSES, EQUIPMENT, CLOUD OR HOSTED SERVICES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE “PRODUCTS”) ACQUIRED BY OR ON BEHALF OF UNITED STATES FEDERAL GOVERNMENT**
DEPARTMENTS, AGENCIES, ADMINISTRATIONS, OR OTHER INSTRUMENTALITIES (“GOVERNMENT” or “GOVERNMENT END USERS”), OR BY CONTRACTORS ON BEHALF OF, FOR TRANSFER OR RESALE TO, OR FOR THE BENEFIT OF GOVERNMENT END USERS (COLLECTIVELY WITH GOVERNMENT END USERS, “GOVERNMENT CUSTOMER”). THIS AGREEMENT SHALL ALSO APPLY TO ANY MAINTENANCE OR CONSULTING SERVICES (“SERVICES”) ACQUIRED FROM TIBCO SOFTWARE FEDERAL INC. (“TSFI”) RELATING TO THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, IF PRODUCTS AND/OR SERVICES ARE BEING ACQUIRED FROM TSFI PURSUANT TO A NEGOTIATED AGREEMENT, THAT NEGOTIATED AGREEMENT SHALL CONTROL.

1. The following shall govern your use of the Products and Services, except to the extent all or any portion are (a) subject to a separate written, duly executed agreement, or (b) are contrary to applicable Federal law. In the event any provision of this Agreement is contrary to or unenforceable under applicable Federal law, the Federal law shall control. For Government End Users, this Agreement supersedes and replaces any shrink wrap, click wrap, or click through terms (“Automated Terms”) that may be presented with Products or Services and any such Automated Terms shall not apply.

2. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in Appendix A. “Order Form” means any purchase order or similar document, written agreement, or a web store or website order or registration requesting Products or Services. “Purchase Date” means the date the Order Form is accepted by us and in the case of a web store or web site transaction, the date of your download or access of a Product. If proprietary source code is included as part of the standard delivery of a Product and is not subject to open source license terms, use of such source code is controlled by the terms of this Agreement. “Updates” means Product bug fixes, enhancements, and updates, if and when made generally available by us as part of Maintenance. “We” or “Us” refers to TSFI, a subsidiary corporation of TIBCO Software Inc. (“TIBCO”). “You” or “Your” refers to the Government Customer acquiring Products or Services pursuant to this Agreement.

3. Alpha, Beta, Developer Evaluation and Evaluation Licenses. If the Products are provided or accessed at no charge for demonstration or evaluation purposes or for alpha or beta testing, then, subject to the license grant in Section 4 below and to the terms and conditions of this Agreement, (a) use of the Products shall be solely for such purposes, (b) the Products shall not be used or deployed in a production or development environment, and (c) such use shall automatically terminate upon the earlier of (i) thirty (30) days from the date TSFI grants the right to install or access the Product, (ii) TSFI’s notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended. If the Products are provided or accessed for Developer Evaluation, (a) use of the Products shall solely be for development evaluation purposes, (b) such use shall not be in a Production environment and (c) such use shall automatically terminate upon the earlier of (i) ninety (90) days from the date TSFI grants the right to receive, install or access the Product, (ii) TSFI’s notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended.

4. License Grant. The Products are the property of TIBCO Software Inc. (“TIBCO”) or its licensors and are protected by copyright and other laws. TSFI is a subsidiary of TIBCO. While TIBCO continues to own or have license rights to the Products, TSFI is authorized to and hereby grants you a limited, non-transferable (except as permitted herein), non-exclusive license, subject to the terms and conditions of this Agreement, to use the Number of Units set forth in the Order Form solely for your internal business use.

5. License Term. The term of each license for a Product shall be either perpetual or limited as designated on an Order Form. If a Product is licensed on a limited term basis, then, unless otherwise set forth in an Order Form, the term shall commence on the Purchase Date and have the following duration:

- Alpha, Beta and Evaluation - thirty (30) days
- Developer Evaluation – ninety (90) days
- Hosted Services - one (1) year
- Cloud - one (1) year
- Software purchases on a term limited basis - one (1) year

If you originally registered to download or access a Product for Alpha, Beta or Evaluation purposes, upon re-registration you may be permitted one (1) additional term. On expiration of a limited term, you must immediately cease using and return or destroy all copies of the Products and related Confidential Information.

6. Delivery. Products are delivered electronically, and delivery deemed complete when duly made available to you.

7. Equipment Purchase.

A. Purchase. When we issue you a quotation and accept your Purchase Order for the purchase of Equipment, we agree, subject to the terms and conditions of this Agreement, to sell you the Equipment described therein. We transfer all title and risk to the hardware component of the Equipment when we or our agent ships the Equipment. For a feature, conversion or upgrade involving the removal of parts in connection with the Equipment, which parts become our property, or for the replacement of Equipment or components thereof pursuant to the Equipment Maintenance Program Guide, the return of the Equipment or parts forms part of your consider to us and we reserve all rights under applicable law regarding said Equipment or parts.

B. Equipment Delivery. For delivery of the TIBCO Messaging Appliance™, title is deemed to transfer upon delivery by our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000). For delivery of all other Equipment, title is deemed to transfer upon delivery by us to our designated freight carrier, FCA TIBCO’s premises (Incoterms 2000). All freight, insurance and other shipping expenses shall be paid to the freight carrier by us. Any shipping or handling charges to be paid by you shall be as identified on the accepted Purchase Order. Delivery is subject to the availability of Equipment.

8. Hosted Services. We shall use commercially reasonable efforts to make the Hosted Services you have purchased available 24 hours a day, 7 days a week, except for: (a) planned downtime under our direct control (of which we shall give at least 8 hours notice via the Hosted Services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific Standard Time Friday to 3:00 a.m. Pacific Standard Time Monday), (b) to the extent we are notified by third party service providers of planned downtime (of which we shall provide such notice to you via the Hosted services as soon we can reasonably do so), or (c) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service or third party hosting provider failures or delays (“Force Majeure”). Hosted Services are provided in accordance with applicable laws and government regulations.

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9. Cloud. Provisioning of the Cloud will be confirmed electronically and delivery deemed complete when such confirmation is made available to you. Provisioning of the Cloud requires an account be established for you in TIBCOMMunity. You agree to and accept the Terms of Use for TIBCOMMunity (http://www.tibcommunity.com/themes/tibotcurrence/resources/html/terms_of_use.html) if you use the credentials to access the TIBCOMMunity site EXCEPT that any provision of the Terms of Use for TIBCOMMunity that is contrary to, or unenforceable against a Government End User under, applicable Federal law shall be of no effect for Government End Users; for Government End Users, Federal law shall apply regardless of any choice of law or venue language in the TIBCOMMunity Terms of Use. Certain Software Products may be provided for installation by you and are provided solely to enable the functionality of the Cloud, and may not be used for any other purpose. You are solely responsible for procuring your own account with the applicable TIBCO-approved third party service provider (“Provider”) for the Cloud and for the technical operation of the content of your account.


A. In connection with your use of Hosted Services or a Cloud, you shall, in addition to the Restrictions below (i) be responsible for your users’ compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of and the means by which you acquire and disclose your data, (iii) not store or transmit infringing, libelous, or otherwise unlawful or tortious material or malicious code, nor store or transmit material in violation of third-party privacy rights, (iv) not sell, resell, rent or lease the Hosted Services or Cloud, (v) use reasonable efforts to prevent unauthorized access to or use of the Hosted Services or Cloud, and notify us promptly of any such unauthorized access or use, (vi) not interfere with or disrupt the integrity or performance of any Provider services or third-party data contained there, (vii) not attempt to gain unauthorized access to the Hosted Services, Cloud or their related systems or networks, and (viii) use the Hosted Services or Cloud only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or the Cloud may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls or number of users, third party terms of use, etc., specified in the applicable Documentation, web store or web site. In the event that you receive any notice claiming that our content in connection with the Hosted Services, Cloud or any Provider services violates a third party’s rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act, you will promptly forward such notice to us, with a courtesy copy to TIBCO’s General Counsel.

B. You will not use Hosted Services or the Cloud to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services or the Cloud, you shall not use any third party software in connection with a Provider’s or TIBCO service in any manner that requires, pursuant to the license applicable to such software, that any Provider or TIBCO property or services be: (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (c) modifiable without restriction by recipients. No software or content provided by us or your users in connection with your use of Hosted Services or the Cloud may contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud or the Provider service.

C. You are solely responsible for adequate security, protection and backup of your data and content. Except as required by applicable law, we are not responsible for Provider services, unauthorized access to your data or content, or the deletion, destruction, damage, loss or failure to store any of your content or other data that you submit or use in Hosted Services or the Cloud.


To the extent consistent with the provisions of FAR 52.227-19 (Commercial Computer Software License), the following restrictions shall apply to Government End Users. Where a restriction is inconsistent with the provisions of FAR 52.227-19, the FAR provisions shall control and the restriction shall not apply to Government End Users. For other customers, the restrictions shall apply.

A. You shall not (a) make more copies than the Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) use any Software not listed in an Order Form, even if such unlicensed software is made available to you as part of the general delivery mechanism for the Products; (c) provide access to the Products to anyone other than employees, contractors, or consultants who agree in writing to be bound by terms at least as protective of TIBCO as those in this Agreement; (d) sublicense, transfer, assign, distribute, rent, sell, lease, pledge, or otherwise attempt to discover the source code or underlying intellectual property of, or to otherwise use, any of the Products or any of your rights under this Agreement (for the purposes of the foregoing a change in control of your company is deemed to be an assignment); (e) use the Products for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or any similar services; (f) use the Products in connection with ultra-hazardous activities, or any activity for which failure of the Products might result in death or serious bodily injury to you or a third party; or (g) directly or indirectly, in whole or in part, modify, translate, reverse engineer, decrypt, decompile, disassemble, make error corrections to, create derivative works based on, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Products. You may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any decompilation or reverse engineering of any Software, you agree to observe strict obligations of confidentiality and provide us reasonable advance written notice and the opportunity to assist with or conduct such activity on your behalf and at your expense.

B. Any additional license parameters applicable to particular Products are set forth in Appendix B.

12. Proprietary Notices. The Products, Documentation and Materials are proprietary to TIBCO and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. TIBCO and its licensors shall retain ownership in the Products, Documentation and Materials; all derivatives thereof (in whole or part); and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Products, Documentation or Materials shall be duplicated by you on all copies of the Products, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated.

13. Extraordinary Corporate Event. For Government End Users, the rights contained at FAR 52.227-19 shall apply in lieu of the following provision. For customers other than Government End Users, to the extent you or your successors or assigns enter into an Extraordinary Corporate Event after the Purchase Date, this Agreement shall not apply to those additional users, divisions or entities which were added to your organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to this Agreement by way of a written amendment signed by our respective duly authorized officers.

A. If you acquired Maintenance from a TIBCO authorized third party, Section 14(B) does not apply. THE TERMS OF ANY MAINTENANCE SERVICES OR RELATED WARRANTY SHALL BE AS AGREED BY AND BETWEEN YOU AND THE TIBCO AUTHORIZED THIRD PARTY. WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO MAINTENANCE SERVICES PROVIDED BY ANY THIRD PARTY.

B. Maintenance, if ordered (or if included in Cloud or Hosted Services), is provided under the policies set forth in the Maintenance Program Guide attached as Appendix C for Products other than Equipment, and at Appendix D for Equipment.

C. Any Updates provided by us or by our authorized resellers or distributors (if applicable) are subject to the terms and conditions of this Agreement. To receive Maintenance, all Products must be properly licensed and Maintenance fees paid. We are under no obligation to provide Maintenance in the event that Maintenance fees have not been paid when properly due and owing.


A. You may procure installation, configuration, training or other consulting or support services (“Consulting Services”) either through a Purchase Order issued against a Consulting Services quotation, or through a work order executed by authorized representative of both parties (“Work Order”). Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6).

B. We hereby grant you a nonexclusive license to use the Materials (and a reasonable number of copies thereof) solely for your internal operations in conjunction with your use of the Products. Materials obtained during your attendance at or from your purchase of virtual training courses, unless otherwise agreed in an Order Form, are limited to the one (1) copy received by each attendee and may not be duplicated.

C. In the event that you are purchasing a license to specific training course content as set forth in an Order Form, the content of each such training course shall constitute a Product for the purpose of this Agreement. Subject to your payment of fees due, you are granted a limited, non-transferable and non-exclusive license to use, modify, translate, create derivative works from, reproduce and distribute the Product solely for your internal business use: provided, however, that the copyright notices and any other legends of ownership are reproduced on each complete or partial copy of such Product. We retain all right, title and interest in the Product, excluding your Confidential Information. All complete or partial copies of the Product in any form shall be subject to the same terms as the original copy. The term of each license and level of annual Maintenance for the Product shall be as set forth in the Order Form.

16. Limited Warranty.

The following Limited Warranty provisions shall apply to Government End Users to the extent permitted by applicable Federal law, including FAR 12.404(b)(2); to the extent that these limitations are not permitted or are unenforceable under applicable Federal law, they shall be of no force or effect for Government End Users. For all other customers, the following Limited Warranty provisions shall apply.

A. If you obtained Software directly from us, we warrant for a period of thirty (30) days from the Purchase Date that (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will substantially conform to its Documentation. This limited warranty extends to you personally and is not transferable. Your sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at our option, to repair or replace (with respect to the affected Software product), or refund the Software license fee. In the event of a refund, this Agreement shall terminate solely with respect to the affected Software product, and you shall immediately cease all use of and return or destroy all copies of such Software.

B. THIS WARRANTY DOES NOT APPLY TO ANY SOFTWARE WHICH (I) IS LICENSED FOR ALPHA, BETA, EVALUATION, TESTING OR DEMONSTRATION PURPOSES FOR WHICH WE DID NOT RECEIVE A LICENSE FEE; (II) HAS BEEN ALTERED OR MODIFIED (UNLESS BY US); (III) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS SUPPLIED BY US; (IV) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (V) IS USED IN VIOLATION OF ANY OTHER TERM OF THIS AGREEMENT.

C. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES ARE PROVIDED “AS IS”. ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO CUSTOMER ALONG WITH CERTAIN PRODUCTS

THIS THIRD PARTY SOFTWARE IS PROVIDED “AS IS”, IS SUBJECT TO THE TERMS OF THE THIRD PARTY LICENSE, AND MAY ONLY BE USED WITH THE PRODUCTS WITH WHICH IT IS PROVIDED TO YOU. SUCH THIRD PARTY SOFTWARE IS PROVIDED SOLELY AS AN ACCOMMODATION TO YOU AND YOU ARE UNDER NO OBLIGATION TO USE SUCH THIRD PARTY SOFTWARE. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY PRODUCTS OR SERVICES, THAT THE PRODUCTS WILL OPERATE WITHOUT ERRORS, PROBLEMS OR INTERRUPTIONS, THAT ERRORS OR BUGS WILL BE CORRECTED, OR THAT THE PRODUCT FUNCTIONALITY OR SERVICES WILL MEET YOUR REQUIREMENTS. NO TIBCO DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY ON TSFI’S OR TIBCO’S BEHALF.

17. Indemnity. For Government End Users, claims that Products infringe any patent, copyright or trade secret shall be subject to the provisions of FAR 52.227-2 and 52.227-3.

For customers other than Government End Users, if you obtained the Software from us directly, then we agree at our own expense to defend or, at our option, to settle, any claim or action brought against you to the extent it is based on a claim that the unmodified Software infringes any patent issued by the United States, Canada, Australia, Japan, or any member of the European Union, or any copyright, or any trade secret of a third party. We will indemnify and hold you harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys’ fees) that are attributable to such claim or action and which are assessed against you in a final judgment provided that you promptly notify us in writing of such claim,
we have the exclusive right to control such defense and/or settlement, and you provide reasonable assistance (at our expense) in the defense thereof. In no event shall you settle any claim, action or proceeding without our prior written approval. In the event of any such claim, litigation or threat thereof, we, at our sole option, (a) provide you the right to continue to use the Software, or (b) replace or modify the Software (or functionally equivalent software) with such license or modification is not commercially reasonable (in our sole reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized portion of the associated license fees paid by you to us based on a five-year straight-line depreciation. This Section states our entire liability with respect to the infringement of any intellectual property rights, and you hereby expressly waive any other liabilities or obligations we have with respect thereto. The foregoing indemnity shall not apply to the extent that (x) any claim is based on or attributable to modifications made by you to the Software, or portions thereof, (y) such claim would have been avoided by use of the then-current release version of the Software, or (z) your continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.

18. Limitation of Liability.

FOR GOVERNMENT END USERS, THE FOLLOWING LIMITATIONS OF LIABILITY SHALL APPLY ONLY TO THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL LAW. TO THE EXTENT THAT THESE PROVISIONS ARE INCONSISTENT WITH APPLICABLE FEDERAL LAW, THEY SHALL BE OF NO FORCE OR EFFECT WITH REGARD TO GOVERNMENT END USERS.

FOR CUSTOMERS WHO ARE NOT GOVERNMENT END USERS, THE FOLLOWING SHALL APPLY:

A. EXCEPT AS PROVIDED UNDER THE INDEMNITY ABOVE; OR IN CONNECTION WITH THE MISAPPROPRIATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, TRADE SECRETS; DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR INTENTIONAL OR GROSS NEGLIGENCE (THE “EXCLUDED MATTERS”), IN NO EVENT WILL EITHER PARTY OR TIBCO’S LICENSORS BE LIABLE FOR ANY LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, LOST REVENUE, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, DOWNTIME COSTS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR TYPE OF DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE PRODUCTS, OR THE PROVISION OF ANY MAINTENANCE, CONSULTING SERVICES EVEN IF A PARTY HAS BEEN ADVISED OR WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES OR DAMAGES.

B. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL A PARTY’S LIABILITY TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING, ACTIVE OR PASSIVE NEGLIGENCE), BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES OR OTHERWISE, EXCEED THE GREATER OF FIFTY THOUSAND DOLLARS ($50,000 USD) OR THE PRICE PAID BY YOU UNDER THE APPLICABLE ORDER FORM. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government’s right to EXPRESS remedies provided in the Agreement.

C. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED REMEDY OR LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.


For Government End Users, confidentiality obligations shall be pursuant to the Freedom of Information Act and other applicable Federal law, and Sections 19A through 19E, below, shall not apply. TIBCO software Products delivered under this Agreement constitute commercial computer software products as defined in the FAR and are delivered with no greater than the rights identified in FAR 52.227-14; data delivered under this Agreement constitutes Limited Rights data, and was developed at private expense, embodies trade secrets, or are commercial or financial or privileged. Pursuant to FAR 52.227-14(g) (Alternate II, DEC 2007), these data may be reproduced by the Government with the express limitation that they will not, without written permission of TSFI, be used for purposes of manufacture nor disclosed outside the Government.

For customers other than Government End Users, the following provisions shall apply:

A. “Confidential Information” means any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement; the Products; Materials; individual contact information provided by either party; Product or related performance test results derived by you, including but not limited to benchmark test results; and your Protected Data (as defined in Section B below) and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own Confidential Information (but using no less than a reasonable degree of protection) and shall only disclose Confidential Information to those with a need to know that information and who have agreed in writing to be bound by terms at least as protective as those contained in this Agreement. Information will not be deemed Confidential Information if (i) available to the public other than by a breach of a confidentiality obligation, (ii) rightfully received from a third party not in breach of a confidentiality obligation, (iii) independently developed by a party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use or disclosure of the other’s Confidential Information. The parties further agree that money damages would not be a sufficient remedy for a breach of confidentiality. The parties shall be entitled to seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be the exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

B. To the extent we are exposed to individual personal data owned or otherwise held by you during the provision of Hosted Services, Cloud, or Services, which is subject to various data protection laws and/or regulations (“Protected Data”), we agree to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at http://www.tibco.com/customer_privacy_security_statement.jsp (the “Statement”). The policies and procedures set forth in the Statement as well as those set forth in the Data Protection Policy Statement at
http://www.tibco.com/resources/data_protection_statement.pdf are in place to meet our obligations for the protection, integrity and confidentiality of any Protected Data which exceed our standard obligations to safeguard Confidential Information.

C. Confidential Information shall remain the sole property of the disclosing party, and each party acknowledges and agrees that it does not acquire any rights therein. Use by a recipient of Confidential Information for the purposes contemplated under this Agreement, including, but not limited to, any configuration or use by you of Products or Materials shall not affect or diminish the disclosing party’s rights, title and interest in and to Confidential Information.

D. We may use any individual contact information provided by you or your users for support, product information and other business to business communications in connection with this Agreement. In the event you or your users wish to opt-out from receiving such communications, you or your users should do so on the web store or website page where you originally submitted provided your information or at http://forms2.tibco.com/unsubscribe/3475269. Please note that communications may still be transmitted after the opt-out request has been submitted but before it has been processed.

E. You acknowledge and agree that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, “know-how” or techniques contained therein) that you provide to us about our Products or their performance (collectively, “Feedback”) shall not be deemed as your Confidential Information and may be used, disclosed, disseminated and/or published by us for any purpose, including developing, manufacturing and marketing products incorporating Feedback, without obligation of any kind to you, and you waive any rights whatsoever in or to all Feedback.

20. Export. Products, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. You agree that you will not nor permit your users to export or re-export the Licensee Software, Documentation and Materials in any form in violation of applicable export or import laws.

21. Government Use. The Products and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use by the Government is restricted according to the terms of this Agreement. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS AGREEMENT, AND AS REQUIRED BY FAR 12.302(b), THE FOLLOWING PROVISIONS FOUND AT FAR 52.212-4 SHALL APPLY:

(1) Assignments; (2) Disputes; (3) Payment (except as provided in subpart 32.11); (4) Invoice; (5) Other compliances; and (6) Compliance with laws unique to Government contracts.

22. Entire Agreement. For Government End Users, to the extent permitted by applicable Federal law and regulation, this Agreement constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties.

For other customers, this Agreement, and any terms which are incorporated by written reference (including written reference to information contained in a URL, Documentation or reference policy) constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties. Except for additional terms you have agreed to in connection with our web stores or web sites, none of the terms of the Order Form (other than the product names, Number of Units, level of Maintenance, description of Consulting Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Order Form to the contrary.

Neither the license to use granted in this Agreement nor the obligation to pay license fees are dependent upon the performance by any party of any Consulting Services or the supply of any other software program or product.

23. Termination.

Between TSFI and Government End Users, termination shall be pursuant to FAR 52.212-4(l)(1) (Termination for the Government's convenience) and 52.212(m) (Termination for cause); no other termination rights shall apply, including paragraphs 23(A) through (F). Nothing in the foregoing, however, shall be understood to grant the Government the right to use Products or Services acquired on a term basis beyond the term set forth in the applicable Purchase Order.

For customers other than Government End Users:

A. This Agreement and all Order Forms shall automatically terminate if: (i) either party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on the Equipment (where we are lessor) and is not released or satisfied within ten (10) days thereafter, or (iii) where we are lessor or in a Purchase where payment in full to us has not been made, if a receiver is appointed in any proceeding or action to which you are a party with authority to take possession or control of the Equipment. In all cases, the Equipment shall be promptly returned to us and not be treated as your asset.

B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen (15) days from written notice from the non-defaulting party; (ii) upon the filing for bankruptcy or insolvency of the other party, (iii) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (iv) by you for Consulting Services, upon ten (10) days prior
written notice or (e) by us for Consulting Services upon thirty (30) days prior written notice. Termination of Maintenance or Consulting Services shall not terminate this Agreement.

C. A Cloud will terminate if or when your or our agreement for services with a Provider is terminated or otherwise expires for any reason. In the event of a termination of your Provider services, by Provider, in connection with a Cloud, without cause (where you are not in breach), to the extent you have prepaid us fees for the Cloud, you may submit written notice requesting a refund, such notice to include evidence of Provider’s termination without cause (e.g. a copy of Provider’s notice of termination). Following receipt of such written notice, we will refund the pre-paid uneearned pro-rata portion, from the date we received your notice, for the remaining Cloud term, or in the case of multiple Cloud purchases, each remaining term. In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services or the Cloud, to the extent you have pre-paid us fees for Hosted Services or Cloud to us, we will refund, as of the date of notice of termination from Provider to us, for the uneearned pro-rata portion of the prepaid fees.

D. You may terminate this Agreement in its entirety at any time, in regard to Software, by destroying all copies of the Software. We may terminate this Agreement at any time, in regard to Software provided to you for evaluation or alpha/beta purposes. In the case of an evaluation of Equipment, where we exercise our right to terminate the Lease for a reason other than your breach of the Agreement, and you have pre-paid fees for the month in which our termination occurs, we will refund the uneearned monthly pro-rated fee to you within thirty (30) days following our receipt of the returned Equipment.

E. If a license, Cloud, or Hosted Services under this Agreement terminates or expires, or upon termination of this Agreement in its entirety for any reason, you shall (i) cease using the Products, Documentation, and related Confidential Information, and (ii) return or notify us in writing within thirty (30) days after termination that you have destroyed such Software, Documentation, related Confidential Information, and all copies thereof, whether or not modified or merged into other materials.

F. Termination of this Agreement, any license, Cloud, or Hosted Services, or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve you of your obligation to pay all fees that have accrued or are otherwise owed by you under this Agreement. Except as set forth in sections entitled “Termination”, “Limitation of Liability” or “Indemnity”, all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. The parties’ rights and obligations under this section and sections entitled “Limited Warranty”, “Indemnity”, “Limitation of Liability”, “Proprietary Notices”, “Confidentiality”, “General”, “Governing Law” and your warranties in connection with Hosted Services and the Cloud, shall survive the expiration or earlier termination of this Agreement.

24. Open Source Software. If you use any third party software not supplied by us, including any open source software, in conjunction with any Product, you must ensure that such use does not require any of the following, pursuant to the terms of such software: (i) disclosure or distribution of any Product in source code form; or (ii) licensing of any Product for the purpose of making derivative works; or (iii) redistribution of any Product at no charge. For the avoidance of doubt, you may not combine Product with any software licensed under any version of or derivative of the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Product or any modifications to the Product to become subject to the terms of the GPL.

25. Special Product Provisions. Software products TIBCO BusinessEvents®, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager and TIBCO® ActiveFulfillment (and each of the foregoing, when included in any Bundle or Embedded/ Bundled Products) are subject to a restricted license and contain third party proprietary code that you may only use in conjunction with the Software and may be subject to additional terms as set forth in Appendix B.


A. As between TSFI and the Government, interest in connection with this Agreement shall be pursuant to the provisions of FAR 52.212-4((j)(6).

B. As between TSFI and other customers: All payments of fees due shall be made in U.S. dollars, net 30 from Purchase Date or, for any other amounts coming due hereafter, net 30 from our invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and you agree to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of any income tax. You agree to pay all reasonable costs incurred (including reasonable attorneys’ fees) in collecting past due amounts. Except as set forth in the sections entitled “Limited Warranty”, “Indemnity” and “Termination” all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. A service charge of one and one-half percent (1 1/2%) per month will be applied to all invoices that are not paid on time. No delay in the performance of any obligation by either party, excepting all obligations to make payment, shall constitute a breach of this Agreement to the extent caused by Force Majeure.

C. You hereby grant us and our independent auditors the right to audit your compliance with this Agreement and report any results to our licensors. You agree to provide reasonable assistance to ensure a complete and accurate audit by us and our independent auditors. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in the Order Form. A copy of any notice of default, breach or termination shall also be sent to that party’s General Counsel.

27. Governing Law. For Government End Users, this Agreement shall be governed by applicable Federal law, including but not limited to the Contract Disputes Act of 1978 as amended, with venue in the Federal courts of competent jurisdiction. For other customers, to the extent permitted by law, this Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are excluded from application hereto.

Addenda:

Appendix A Definitions
Appendix B Product Parameters
Appendix C Product Maintenance
Appendix D Equipment Maintenance
TSFI EULA Appendix A -- Definitions

"Academic Bundle" means a Bundle which is licensed to an accredited education institution solely for educational use, teaching and individual student or faculty non-funded research purposes in Non-Production. Use in Production, or for the purpose of funded research or for any classes offered electronically via the internet or otherwise (i.e.: "on-line" classes) is prohibited. For the purposes of an Academic Bundle, Licensee may provide access to the Licensor Software products by students who are Named Users, subject to such Named Users agreeing to be bound by terms at least as protective of Licensor as the terms of this Agreement.

"Affiliates" means entities, regardless of corporate status, controlled by, controlling or under common control with Licensor or Licensee, respectively, or officers, directors, shareholders, employees or agents of any of the foregoing.

"Broker" means the component within the applicable Site Copy which schedules work for Engines in a GridServer® or FabricServer® environment. GridServer environment means at least one TIBCO DataSynapse GridServer® Broker and a pool of servers with the TIBCO DataSynapse GridServer® Engine executing grid services. FabricServer environment means at least one TIBCO DataSynapse FabricServer® Broker and a pool of servers with the TIBCO DataSynapse FabricServer® Engine managing enterprise applications.

"Bundle" means a collection of Licensor Software, listed in Licensor's quotation or price book, to be sold together under a collective name such as "XXX Bundle" which consists of X, Y and Z. The Licensor Software which comprises a Bundle must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the Bundle; provided that a Bundle component may be accessed by or communicate with other Licensor Software separately licensed by Licensee. In no event may the Licensor Software which comprises a Bundle be used on a standalone basis. A "Bundle" is sold at a discount to the cost of licensing the individual components due to the restrictions imposed on the use of the Bundle by this section and any specific license restrictions imposed by this Agreement. If the terms of this Agreement with regard to a Bundle are breached, such breach must be cured within ten (10) days of Licensor notifying Licensee in writing of the breach. In addition to the foregoing, where Bundle is used as the Unit type, Licensee's use is limited to the Number of Units and Unit type for each component which comprises the Bundle, as set forth in the bill of material for such Bundle.

"CICS Region" means a subdivided mainframe address space managed by CICS for resource allocation, resource sharing, and transaction execution, of which the resource definitions include the TIBCO EMS Client for z/OS.

"Cloud" means an internet based computing service offered by a Licensor approved third party, which permits users to make use of a hosted hardware and software environment, which includes, among other components, Licensor Software set forth in an Order Form.

"Concurrent Users" means the number of Authorized Users that are simultaneously logged in to the Licensor Software at any single point in time.

"Connection" means any network link or session established with Licensor software, directly or indirectly to any other entity, including but not limited to software, firmware or hardware. For TIBCO Rendezvous® and TIBCO SmartSockets®, "Connection" means any network protocol link established with such Licensor Software (directly or indirectly) to any other entity, including but not limited to software, firmware or hardware.

For TIBCO ActiveSpaces®, "Connection" means any session established directly or indirectly to a TIBCO ActiveSpaces® Metaspaces cluster instance.

For TIBCO DataSynapse Federator™, "Connection" means a web service session established to a TIBCO DataSynapse GridServer® Manager Instance or a TIBCO DataSynapse FabricServer® Manager Instance; for TIBCO DataSynapse™ Analytics or TIBCO® Cloud Analytics, a database session established to a TIBCO DataSynapse GridServer® Broker reporting database or TIBCO Silver™ Fabric Manager reporting database; and for TIBCO® Data Quality Service Engine Named Application, any link or session established directly or indirectly (through any other middleware application) which calls to a named third party software application.

"Consumer Price Index" means (unless otherwise set forth in this Agreement or an Order Form) the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U).

"Connected Processor" means any processor that produces information consumed by the relevant Licensor Software product (excluding processors on devices such as routers, switches, proxies, HTTP or application servers configured to substantially pass-through information or messages to Licensor Software).

"CPU" means a chip that contains a collection of one or more cores on which the program is running. Regardless of the number of cores, each chip counts as one (1) CPU. This definition pertains solely to the TIBCO LogLogic Product Line and does not affect, nor is it affected by, the Processor Unit Type or Processor counting policy.

"Developer" means a Named User of a Licensor Software product other than for use only in Non-Production.

"Development License" for TIBCO Spotfire® Developer or TIBCO Spotfire DecisionSite® Developer means use by a Developer in accordance with the Documentation in Non-Production for the purposes of configuring analyses created with TIBCO Spotfire products and/or extending the TIBCO Spotfire product platform. The Development License includes the right to use resulting developments in conjunction with Licensee's right to use Licensor Software for Production purposes.

"Documentation" means text material that accompanies an Item of Licensor Software on delivery, describing how to make use of that software. "Engines" means for GridServer products a single thread that processes tasks or services in a first in, first out (FIFO) queue, and for FabricServer products a single agent that manages the deployment and performance of an application. Typically, only a single engine runs on a single cpu/core so that the number of engines in the grid is the same as the number of cpu's/cores in a GridServer or FabricServer environment.

"Enablement License" means for use in connection with and for up to the Number of Units licensed of the TIBCO DataSynapse™ Licensor Software which contains the word "Edition" in the product name, and if a) an Application Enablement License, a license to deploy JavaEE applications, built on the applicable third party application server, or b) for an Enterprise Enablement License, a license to deploy or integrate with the applicable third party
application, or in connection with Command Lind, to deploy custom or external applications. Enablement Licenses do not include Engines required for running third party applications or any integration software to mesh or permit the Licensor Software to function with such third party applications.

"Enterprise" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Enterprise in the Order Form, to be deployed by Licensee until the Enterprise Term Expiration Date set forth in the Order Form, (the "Enterprise Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Enterprise Term, Licensee's right to deploy shall not extend to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Enterprise Term, written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Enterprise Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on an Enterprise basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Equipment" means a hardware appliance, obtained from or through Licensor, in which Licensor has caused the Licensor Software to be embedded, and which is listed on an Order Form under License Type "Lease" or "Purchase". Equipment shall have the same meaning as Licensor Software where Licensor Software is or has been used elsewhere in this Agreement. Licensor Software embedded in the Equipment is licensed solely to enable the Equipment to function in accordance with its Documentation.

"Extraordinary Corporate Event" means a corporate transaction which results in Licensee divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Licensee or its legal or corporate structure.

"Fixed Partitioning" means a mechanism for allocating processing resources on a multi-Physical Processor machine, such that the Licensor Software is limited to running on a fixed isolated subset of the Physical Processor(s), e.g. physical partitioning and fixed (hard) processor affinity.

"GB RAM" means total number of Gigabyte's of Random Access Memory (RAM) on one or more servers where the Licensor Software is installed or otherwise accessed by Licensee. For the foregoing, server(s) means a physical or virtual computer with measurable amounts of RAM.

"Hosted Services" means online, internet based computing services provided by Licensor.

"Instance" means the smallest functionally-complete copy of Licensor Software. For the avoidance of doubt, the various components of one single Instance may be deployed on a single Server or separately spanning multiple Servers.

For TIBCO Rendezvous®, "Instance" means a TIBCO Rendezvous® daemon, where each daemon is an operating system process with a unique process id.

"License Type" means the environment(s) in which the Licensor Software may be used (including without limitation, Production and/or Non-Production, Cloud or Hosted Services.

"Licensor Software **™** means the most current, generally available, object code version (or, in the case of Cloud, a machine and or disk image) of the Licensor's product on all supported Platforms then currently available, including Documentation and any subsequent Updates (as defined in the Maintenance Program Guide located at http://www.tibco.com/services/support/default.jsp) provided under Maintenance. Licensor Software does not include multiple Platforms if the software product is licensed on a Platform specific basis as designated in the Licensor Software product name or listed in an Order Form or purchase order. Licensor Software includes TIBCO Spotfire® Web-Based Training products and excludes TIBCO® Data Quality Postal Directory(ies) as set forth in an Order Form. Where the terms "TIBCO Software", "Spotfire Software", "TIBCO Spotfire Software", or "Software" (in connection with a Licensor click-wrap End User License Agreement, or Licensor acquired company license agreements) are being or have been used, they shall have the same meaning as Licensor Software.

"Managed Endpoints" means the number of Processors running instances of TIBCO ActiveMatrix BusinessWorks™ or other third party service implementations (e.g. Java or .NET components) that are being managed by TIBCO ActiveMatrix® Policy Manager.

"Materials" means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Licensor during the performance of Consulting Services which incorporates, reinforces or is used to apply Licensor's configuration or implementation methodologies, processes and know-how to Licensee's use of the Licensor Software, excluding Output.

"Module" means Licensor Software that is licensed to add functionality or capabilities in conjunction with an underlying Licensor Software product and may only be used in conjunction with the relevant underlying Licensor Software product. So long as Licensee holds a valid license in the underlying Licensor Software product, Licensee may use a reasonable number of copies of the Module to support the same business as the underlying Licensor Software product, but subject to any applicable Site, Project or other business limitations or restrictions applicable to the underlying Licensor Software product. Licensee's right to utilize Modules shall terminate automatically upon termination of the license in the underlying Licensor Software product.

"MSU" means Millions of Service Units per hour, based on the then current MSU rating established by IBM for IBM and IBM compatible hardware which is used for software pricing (not necessarily a direct indication of relative processor capacity) as set forth in IBM's generally available Large System Performance Reference.

"Named User" means an identifiable individual, not necessarily named at the time of a license grant, designated by Licensee to access the Licensor Software, regardless of whether or not the individual is actively using the Licensor Software at any given time. An individual shall only be designated as a Named User on the earlier of a) he or she is authorized by Licensee to access the Licensor Software or b) once he or she has accessed the Licensor Software. In the case of TIBCO Formvine®, identifiable individuals will be counted as Named Users in accordance with the TIBCO Formvine® Licensor Software product Documentation. In the case of TIBCO® Nimbus Control, Named Users account types are further defined in the TIBCO® Nimbus Control Licensor Software product Documentation in the section entitled "Summary of User Rights".

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*Non-Production* means a non-operational environment into which the Licensor Software may be installed, which is not processing live data, which is not running any operations of the Licensee and which has not been deployed to permit any users to access live data. Non-Production environments include development, hot standby, high-availability, and test environments.

*Number of Units* means the cumulative number of copies of Licensor Software licensed for use by type of Unit, as set forth in this Agreement, an Order Form or in a purchase order, and including, if applicable, the current number of copies as reported by Licensee upon expiration of a Project or Enterprise Term.

*Orders* mean the total number of unique transactions submitted, stored in and counted by the applicable Licensor Software product during a period. Unless otherwise agreed, this period shall equal one (1) year from the Effective Date. The number of Orders shall reset to zero on each anniversary of the Effective Date. In no event shall the total number of Orders during a one (1) year period exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

*Order Form* means any written order for Licensor Software or services, including, without limitation, a purchase order, Work Order, Statement of Work, Order Form or other form of ordering document delivered to Licensor, which is subject to, and incorporates by reference, the terms and conditions of this Agreement, and to which no other terms shall apply.

*Output* means Confidential Information of Licensee that has been input in the Materials for Licensee’s use of the Licensor Software. *Physical Processor* means the smallest physical electronic circuit which is capable of reading and executing computer programs and providing results as output e.g. a CPU (socket), core, or thread.

*Platform* means for each discrete Licensor Software product, the operating system, hardware and/or environments (whether virtual or physical), upon which each product is supported, as set forth in its Documentation, or as specifically identified in the Licensor Software product name.

*Postal Directory* means a copy of the applicable product installed on a single Server.

*Processor* means a licensing Unit type for the Licensor Software, based on the count of Virtual and/or Physical Processors as described in the TIBCO Processor Licensing Policy.

*Processor Bundle* means the Number of Units as determined by the number of Processors on which the Licensor Software licensed as a Bundle is licensed to run.

*Processor Source Locked* means the number of Processors the Licensor Software is installed on multiplied by the number of instances of a source system or database regardless of how many Processors are used by the source system or databases.

*Product Lines* means sets of products and services determined by Licensor from time to time that are (a) attributed to a particular Licensor product family, or (b) made available under separate purchase or license models, in the case of either (a) or (b), as set forth in a Licensor product family’s then current list price. Licensor does not permit aggregation of products, services, purchase or license models and cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.

*Production* means an operational environment into which the licensed Licensor Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data.

*Project* means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Project in the Order Form, to be deployed by Licensee until the Project Term Expiration Date set forth in the Order Form, (the "Project Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Project Term, Licensee’s right to deploy an unlimited Number of Units does not extend beyond the scope of the Project set forth in the Order Form, or to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Project Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on a Project basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

*Purchase* means when used in connection with "Equipment", the purchase of the hardware appliance, where Licensor transfers title of the hardware appliance to Licensee. The Licensor Software is licensed under the terms of this Agreement and not sold. Licensor (or a third party) owns the Licensor Software.

*Read-only User* means an identifiable individual, not necessarily named at the time of license grant and regardless of whether the individual is actively using the Licensor Software at any given time, designated by Licensee to access the Licensor Software for the sole purpose of searching for and viewing data.

*Record* means a unique data item stored in and counted by the applicable Licensor Software product. The total number of Records shall in no event exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

*Server* means a single computer performing common services for multiple other machines.

*Server Instance* means a computer with one (1) CPU, unless otherwise agreed in writing, performing common services for multiple other machines.

*Site Copy* means the number of copies of the Licensor Software licensed for use at the physical location of the Licensee entity signing an Order Form or as otherwise specifically designated as the site location in an Order Form.

*Spare* means a unit of Equipment identified by use of the word “Spare” in its product name, which is kept in storage at the same location as Equipment in productive use. In the event Equipment in productive use becomes inoperative, Licensee may set up and configure a Spare for productive use, until
the original Equipment becomes operational again, but in no event for a period greater than three (3) months, without first obtaining Licensor’s written consent.

"Third Party Software" means third-party software identified by its company and/or product name, the provision of which by Licensor is made solely as an accommodation and in lieu of Licensee purchasing a license to Third Party Software directly from the third party vendor.

"TIBCO Processing Unit" or "TPU" means a Unit for measuring computing power as designated in the applicable TPU Conversion Table located and incorporated by reference at http://www.tibco.com/software/cloud-instance-type-tpu-conversion-table.jsp and as are set forth in an Order Form.

"TIBCO Processor Licensing Policy" means the document published by TIBCO from time to time which explains how to count Virtual and/or Physical Processors in order to determine the number of Processors.

"Trading Partner" means an entity or individual with whom the Licensee engages in accordance with this Agreement in electronic commerce by means of Licensor Software and, in the case of TIBCO® KPSA, TIBCO® KxDR and TIBCO Kabira® License Software products, an individual with whom Licensee engages to provide services, which may include, electronic commerce and or general service activation and provisioning of wireline and wireless packages for the exchange of data and content.

"Unit" means a license restriction describing the manner in which a copy (or multiple copies) of the Licensor Software may be deployed (including, without limitation, Processor, Named User, Connected Processor, and Processor Source Locked) and is the mechanism used to determine the Number of Units licensed under this Agreement, an Order Form or a purchase order.

"User" means an employee of Licensee who is authorized by Licensee to use the Licensor Software in accordance with this Agreement. The number of Licensee computers on which the Licensor Software is installed shall not exceed (but may be less than) the number of licensed Users.

"Virtualized Environment" means an operating system environment where multiple Virtual Machines can run on a single physical machine or cluster, sharing the physical machine resources. In a Virtualized Environment, a Virtual Processor can run on only one Physical Processor at a time.

"Virtual Machine" means a software implementation of a machine that executes programs like a physical machine. An essential characteristic of a Virtual Machine is that the software running inside of the Virtual Machine is limited to the resources and abstractions provided by the Virtual Machine. The processing capacity of a Virtual Machine is measured in Virtual Processors.

"Virtual Processor" means a simulation of a Physical Processor that is serially time-multiplexed across one or more Physical Processors. Special Provisions Regarding Processor Licensing:

Certain Licensor Software is licensed by the Unit type "Processor." The following describes how to calculate the number of Processor Units which should be licensed in a Virtualized Environment and in all other environments.

Calculation

The number of Processor Units of Licensor Software required to be licensed shall be calculated as follows:

1. In a Virtualized Environment, the number of Virtual Processors shall be calculated by following the steps below:

   1. For each Virtual Machine running the Licensor Software, the number of Virtual Processors shall be counted in increments of whole numbers. For clarification, the lowest unit of measurement for Virtual Processors is one; any fraction shall be rounded upward to the next whole number.

   2. If the number of Virtual Processors of a Virtual Machine can increase or decrease, then for the purpose of counting Virtual Processors, the number of Virtual Processors shall be the maximum whole number of Virtual Processors that could ever be assigned to the Virtual Machine running the Licensor Software.

   3. Add the total number of Virtual Processors across all Virtual Machines within the entire Virtualized Environment that runs the Licensor Software.

2. In all other environments (e.g. running on physical machine(s) or if a Virtual Processor can run on more than one Physical Processor at a time), the number of Physical Processors shall be calculated by following the steps below:

   1. For each Licensor Software, the relevant partition boundary shall be set:

      (a) where the allocation is defined by Fixed Partitioning, to include all Physical Processors that could ever execute the Licensor Software. (b) where the allocation is not defined by Fixed Partitioning, to include all Physical Processors on the physical machine.

   2. Count the total number of Physical Processors for the relevant partition boundary for each physical machine, and aggregate the counts across all physical machines within the entire environment that runs the Licensor Software.

   3. For all environments, if multi-threading is enabled for the underlying physical cores, then the total count of Physical Processors or Virtual Processors, as the case may be, shall be multiplied by 0.5.

      1. If the multi-threading function is disabled, then a multi-threaded core shall be treated as a single-threaded core, in which case, (a) when calculating the number of Processors in a Virtualized Environment, the 0.5 multiplier shall be inapplicable; and (b) when calculating the number of Processors in all other environments, the number of cores instead of threads shall be the number of Processors Units required to be licensed and the 0.5 multiplier shall be inapplicable.

   4. Any fraction shall be rounded upward to the next whole number.
The above calculation yields the total number of Processor Units required to be licensed for the Licensor Software.

Appendix B – License Parameters

Effective April 1, 2012 – To the extent that TIBCO products contain Java SE, use of the Java SE Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at http://www.oracle.com/technetwork/java/javase/documentation/index.html.

Effective January 20, 2012 – TIBCO Formvine®

The module of the Licensor Software called TIBCO Formvine® Project Tools allows Licensor to create and manage TIBCO Formvine® projects, and to view, edit and export the data gathered through a Formvine® project's online form. Only the number of Named Users listed in an accepted Order Form which includes the Licensor Product named TIBCO Formvine® Project Tools shall be entitled to use the "Project Tools" as defined in the Documentation.

The module of the Licensor Software called TIBCO Formvine® Integration Add-on allows software other than TIBCO Formvine® Project Tools to exchange information with the TIBCO Formvine® Server by way of the server's application programming interfaces ("Formvine® APIs"). Only to the extent that an accepted Order Form includes the Licensor Product named TIBCO Formvine® Integration Add-on, shall Licensee have rights to use software other than the licensed TIBCO Formvine® Project Tools in conjunction with the Formvine® APIs.

Effective December 1, 2011 – The following definition of Processor is being retired and will only apply to contracts entered into on or before November 30, 2011:

"Processor" means a central processing unit ("CPU") on which the Licensor Software is licensed to run. For purposes of counting Processors on multicore chips, the number of Processors is the number of CPUs times the number of cores multiplied by .75.

Effective July 1, 2010 - TIBCO Foresight™ HIPAA Validator® Desktop; TIBCO Foresight™ Community Manager®; TIBCO Foresight™ Instream®; TIBCO Foresight™ Transaction Insight®; TIBCO BusinessConnect™ EDI Protocol HIPAA Edition powered by Instream® ("Editorial Content Products")

The Editorial Content Products contain CPT Editorial Content, which is licensed from the American Medical Association ("AMA"). The AMA holds the copyright to CPT Editorial Content and the registered trademark "CPT". Provision of updated CPT Editorial Content in the Editorial Content Products is dependent on continuing contractual relationship between Licensor and the AMA. The following terms apply to end users of the Editorial Content Products:

1. The license granted to Editorial Content Products is a nontransferable, nonexclusive license, for the sole purpose of internal use by Licensee and Licensee must ensure that anyone with authorized access to the Editorial Content Products will comply with the provisions of Licensee's license agreement with Licensor. Licensee is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party any copy or portion of the Editorial Content Products.

2. Notices of proprietary rights, including trademark and copyright notices in the Editorial Content Products, may not be removed from any permitted back up or archival copies made.

3. CPT Editorial Content as contained in the Editorial Content Products is provided "as is" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or any guarantee or warranty that the CPT Editorial Content will meet Licensee's requirements. The AMA's sole responsibility is to make available to Licensor replacement copies of the CPT Editorial Content if the data is not intact. The AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in CPT Editorial Content.

4. U.S. Government Rights. The Editorial Content Products include CPT Editorial Content, which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60654. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of FAR 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited right restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

Effective July 1, 2010 – The following Licensor Software products are each licensed for the sole purpose set forth below:

TIBCO® KPSA – Mobile for provisioning and activating telecommunication services and mobile access networks (such as GSM, EDGE, UMTS, GPRS, and HSDPA) each for Licensee's mobile telecommunication subscribers. TIBCO® KPSA – Broadband – for provisioning and activating telecommunication services and broadband access networks (such as DSL, optical fiber, and WiMAX) each for Licensee's broadband subscribers. TIBCO® KPSA Load Balancer – Mobile – for distributing traffic across TIBCO KPSA – Mobile nodes. TIBCO® KPSA Load Balancer – Broadband – for distributing traffic across TIBCO KPSA – Broadband nodes. TIBCO® KxDR – Mobile – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by mobile network elements and service platforms serving Licensee's mobile subscribers. TIBCO® KxDR – Broadband – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by broadband network elements and service platforms serving Licensee's broadband subscribers. TIBCO® KPSA – Order Management – for managing the end-to-end lifecycle of Licensee's customer requests for the delivery of telecommunication products as captured from order entry systems (excluding the provisioning and activation of telecommunication services and mobile or broadband access networks).
Effective May 27, 2010 - Licensor Software products TIBCO BusinessEvents™, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager, TIBCO® ActiveFulfillment, TIBCO LogLogic® Enterprise Virtual Appliance, TIBCO LogLogic® Compliance Manager, TIBCO LogLogic® Security Event Manager Appliances, TIBCO LogLogic® Log Management Enterprise Appliances (including but not limited to TIBCO LogLogic LX Appliances and TIBCO LogLogic® ST Appliances) and TIBCO LogLogic® Log Management Mid-Market Appliances(TIBCO LogLogic® MX Appliances), (and each of the foregoing when included in a Bundle or as Embedded/Bundled products) are subject to a restricted license and contain third party proprietary code that Licensee or Partner can only use in conjunction with the Licensor Software.

Effective May 1, 2010 – TIBCO DataSynapse™ Analytics is an Embedded/Bundled product, which includes, in part, TIBCO Spotfire® Web Player and TIBCO Spotfire® Professional as bundled Licensor Software. In addition to Embedded/Bundled Products restrictions, Licensee’s use of these bundled products in connection with TIBCO Spotfire® Analytics is limited to 25 Named Users of TIBCO Spotfire Web Player, 5 Named Users of TIBCO Spotfire Professional.

Effective February 18, 2010 – All TIBCO iProcess Spotfire® Add-on Web User is licensed solely to increase the number of TIBCO Spotfire® Web Player Named Users included in and for use in connection with the TIBCO iProcess Spotfire® Add-on Bundle. TIBCO iProcess Spotfire Add-on Web User may be used solely in connection with the TIBCO iProcess Spotfire Add-on Bundle.

Effective May 12, 2009 – All TIBCO Spotfire® Application Data Services products shall be used exclusively with TIBCO Spotfire® Analytics Server or TIBCO Spotfire® Server and shall only be accessed via ODBC or JDBC.

Effective June 1, 2007 – TIBCO iProcess™ Decisions Studio and TIBCO iProcess™ Decisions must be used with TIBCO iProcess™.

Effective April 1, 2001 – "Embedded/Bundled Products” – Some Licensor Software embeds or bundles other Licensor Software. Use of such embedded or bundled Licensor Software is solely to enable the functionality of the Licensor Software licensed under this Agreement, and may not be used or accessed by any other Licensor Software, or for any other purpose.

Effective December 24, 2000 – TIBCO BusinessPartner / Effective October 17, 2006 – TIBCO BusinessConnect Remote - Licensee may sublicense to third parties ("Partners") up to the total Number of Units of TIBCO BusinessPartner or TIBCO BusinessConnect Remote, provided that for every such sublicense, the Number of Units Licensee is licensed to use shall be reduced by the same number, and provided further that prior to delivery of TIBCO BusinessPartner or TIBCO BusinessConnect Remote to a Partner, such Partner agrees in writing (a) to be bound by terms and conditions at least as protective of Licensor as the terms of this Agreement, (b) that TIBCO BusinessPartner or TIBCO BusinessConnect Remote be used solely to communicate with Licensee’s implementation of TIBCO BusinessConnect, and (c) for such Partner to direct all technical support and Maintenance questions directly to Licensee. Licensee agrees to keep records of the Partners to which it distributes TIBCO BusinessPartner or TIBCO BusinessConnect Remote, and to provide Licensee the names thereof (with an address and contact name) within sixty (60) days of the end of each calendar quarter.

TSFI EULA Appendix C – Maintenance Program Guide
1 Overview

TIBCO is dedicated to the success of our customers by providing timely responses to problems with TIBCO software products. TIBCO's highly skilled support engineers are well versed in TIBCO's software products. TIBCO's support services group is a global organization that uses a "follow-the-sun" model to ensure that support is available whenever it is needed. Support centers are located around the world to support all the TIBCO product lines.

In the event you have contracted for Maintenance Services at the Bronze Level, the supported time zone assigned for Service Hours will be based on the TIBCO software delivery address for your company.

All Equipment Maintenance is subject to the terms of the Equipment Maintenance Program (Appendix D).

2 Maintenance Service Levels

2.1 TIBCO Maintenance Service Levels

<table>
<thead>
<tr>
<th>MAINTENANCE LEVEL</th>
<th>Updates Only</th>
<th>Bronze (includes Updates)</th>
<th>Silver (includes Updates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Hours:</td>
<td>N/A</td>
<td>9am-5pm, Monday-Friday</td>
<td>24 Hours/Day, 7 Days/Week</td>
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<td></td>
<td></td>
<td>Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.</td>
<td></td>
</tr>
<tr>
<td>Initial Response:</td>
<td>N/A</td>
<td>Severity 1 &amp; 2: 4 Business Hours</td>
<td>Severity 1 &amp; 2: 4 Hours</td>
</tr>
</tbody>
</table>
2.2 Spotfire, DataSynapse, and Foresight Maintenance Service Levels

<table>
<thead>
<tr>
<th>MAINTENANCE LEVEL</th>
<th>Bronze term (includes Updates)</th>
<th>Silver (includes Updates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Hours:</td>
<td>9am-5pm, Monday-Friday</td>
<td>24 Hours/Day, 7 Days/Week</td>
</tr>
<tr>
<td></td>
<td>Service Hours are based on CET, UTT/GMT, GMT+5:30, GMT+8:00, GMT+9:00, and EST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., Sweden and Japan.</td>
<td></td>
</tr>
<tr>
<td>Initial Response:</td>
<td>Severity 1 &amp; 2: 4 Business Hours</td>
<td>Severity 1 &amp; 2: 4 hours</td>
</tr>
<tr>
<td>Target Resolution:</td>
<td>Severity 1: 48 Hours</td>
<td>Severity 1: 48 Hours</td>
</tr>
<tr>
<td></td>
<td>Severity 2: 5 Days</td>
<td>Severity 2: 5 Days</td>
</tr>
<tr>
<td></td>
<td>Severity 3: Next Major Release</td>
<td>Severity 3: Next Major Release</td>
</tr>
<tr>
<td>Number of Contacts:</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

3 Maintenance

For the purpose of any license or maintenance agreement under which Maintenance is provided, as used below, “Licensor Software,” shall include “TIBCO Software,” “Spotfire Software” or “Software” as defined in any such agreement. “Customer,” as used below, shall have the same meaning as defined for the customer company entity licensed to use the Licensor Software in any such agreement.

3.1 Severity Level Definitions

“Severity 1” is an emergency production situation where the Licensor Software is totally inoperable or fails catastrophically and there is no workaround;

“Severity 2” is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Licensor Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable;

“Severity 3” is where the Licensor Software is usable, but does not provide a function in the most convenient manner; and

“Severity 4” is a minor problem or documentation error, which is reasonably correctable by a documentation change or by a future maintenance release from TIBCO.

3.2 Scope

TIBCO will use commercially reasonable efforts to resolve matters according to the problem Severity ("Maintenance") level determined by TIBCO. All communications will be in English. Customer will use commercially reasonable efforts to provide: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access to a Customer authorized contact. During the Maintenance term, Customer authorized contacts as applicable for the Maintenance level selected in Customer’s order, and which are registered at TIBCO's support website, may notify TIBCO's Technical Assistance Center of an error, defect, or malfunction in the Licensor Software. Maintenance includes the right to use Updates (as defined below) as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by TIBCO, or TIBCO's their respective authorized resellers or distributors (if applicable); Updates are subject to Customer’s license agreement limitations and restrictions. “Updates” means Licensor Software bug fixes, enhancements, and upgrades, if and when made generally available by TIBCO under Maintenance to Customers for a specific Licensor Software product. Subject to the quantity of Licensor Software licensed and payment of any applicable Maintenance fees, Customer’s right to use Updates extends to any supported Platform then currently available for each discrete Licensor Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at TIBCO’s sole discretion) to have no more than a minimum different in price, features and functionality from previously available Platforms. TIBCO will notify Customer in writing in the event that Maintenance is materially affected by TIBCO licensor(s). TIBCO will provide Maintenance for a release version of the Licensor Software products for at least (a) six months after a new release version is generally available, but in no event for more than (b)(i) two years from the general availability of a Licensor Software release version or (b)(ii) one year from the general availability of a subsequent release version, whichever of (b)(i) or (b)(ii) is later, after which Maintenance shall be discontinued for that release version.

3.3 Limits

Customer must purchase the same service level of Maintenance for all quantities of Licensor Software products that it has licensed from TIBCO or any other third party. Unless otherwise stated in an Order Form, each license grant is incremental to all prior license grants and consequently each grant is subject to additional Maintenance, if purchased. For the avoidance of doubt, Maintenance fees are based on cumulative license fees paid. Maintenance does not include support for any non-TIBCO software, custom configuration, product modification, new products and functionality for which TIBCO is charging an additional license fee, services at a Customer site, any work product provided under Consulting Services or for Licensor Software products

<table>
<thead>
<tr>
<th>Target Resolution:</th>
<th>N/A</th>
<th>Severity 1: 48 Hours</th>
<th>Severity 2: 5 Days</th>
<th>Severity 3: Next Major Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>TIBCO DirectConnectSM Manager (DCM) Support</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Authorized Contacts:</td>
<td>N/A</td>
<td>Unlimited</td>
<td>Unlimited</td>
<td></td>
</tr>
</tbody>
</table>
Although TIBCO does not include all virtualization environments in our product test plans, and subject to there being no more than minimal differences with non-matching service levels, TIBCO reserves the right to make fixes only to the most current version of the relevant Licensor Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version.

3.4 Perpetual Term Licenses
The initial Maintenance term shall be for one year commencing on the effective date of the applicable Customer order, unless otherwise stated in the relevant Order Form. In the event Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance will be renewed for successive one (1) year terms and the annual Maintenance fee for the first renewal term shall not increase by more than the percentage rate change in the Consumer Price Index for the 12 month period immediately preceding the anniversary date of Maintenance. Maintenance fees for subsequently acquired Licensor Software will be prorated to expire with the then-current annual Maintenance term.

3.5 Limited Term Licenses
The initial Maintenance term shall be for one (1) year commencing on the effective date of the applicable Order Form. During the license term, and in the event the Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance may be renewed for successive one year terms, and the annual Maintenance fee for the first renewal term shall be equal to the annual Maintenance fee for the initial term.

3.6 Reinstatement of Maintenance
Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed.

3.7 Non-Continuous Coverage
In the event Customer elects not to maintain continuous Maintenance, TIBCO may, at its discretion, refuse to provide any Maintenance to Customer until payment for the period of discontinuity is made current.

3.8 Discontinued Support for Prior Release Version
When a prior version goes out of Maintenance, it means that fixes will no longer be generally available for that version. Support will continue to accept problem reports for that prior version, and when feasible, will attempt to provide Customer with reasonable assistance to troubleshoot and resolve the problem. Engineering will only evaluate reported issues in the supported versions of the Licensor Software product.

When a Customer:

- encounters a known defect, which is already corrected in the most current or a supported version of the Licensor Software, the Customer will need to upgrade to the most current or supported version of the Licensor Software to obtain the fix; or
- discovers an unknown defect, engineering will make the fix in the most current version of the Licensor Software and the Customer will need to upgrade to that version to obtain the fix.

Additionally, with typically 12 months prior notice, TIBCO may announce the end of support (i.e. stop accepting SRs) on significantly older versions by publishing a Late Breaking News (LBN) article on the TIBCO Support Web site (https://support.tibco.com/esupport/). Even in such a case, access to the knowledge base of the older versions is always available to a Customer currently under Maintenance. A Customer may submit a service request via the TIBCO Support Web to request a product version be included under the TIBCO Extended Support Program.

3.9 Product End-of-Life
Notwithstanding 3.2 above, Customers are provided advance written notice (up to twelve months) when Licensor Software is to be retired. This information is published as “Retirement Notices” under the Late Breaking News (LBN) section of the TIBCO Support Web.

3.10 TIBCO Extended Support Program
TIBCO is pleased to offer customers extended Maintenance on certain Licensor software product versions. The scope and terms of extended Maintenance:

Include
- The ability to submit service requests for eligible product versions.
- TIBCO assistance providing workarounds and existing fixes for issues reported; staging of issues by TIBCO will be on the latest version of eligible product(s).
- Maintenance service level initial response and target resolution times are according to customers’ existing Maintenance service level.

Exclude
- Enhancements, service packs, or defect corrections
- Support for new platforms (database versions, operating system versions, TIBCO infrastructure products, etc.)
- Back porting of any fixes (including, but not limited to, bug or security fixes) from later product versions
- Partners participating in the TIBCO Partner Network or any other TIBCO Partner program.

Extended Maintenance is subject to eligibility requirements. Please contact your TIBCO Sales Account Executive or the TIBCO Maintenance Renewal team at renewals@tibco.com for more information and to obtain the then current list of product versions currently supported under extended Maintenance.

TIBCO reserves the right, at its discretion, without notice of any kind, to change products and product versions included in any extended Maintenance product version list. Changes to the extended Maintenance product version list will have no impact during any Maintenance term for which TIBCO Extended Support Program Maintenance fees have already been paid.

3.11 Virtualized Environments Support
Although TIBCO does not include all virtualization environments in our product test plans, and subject to there being no more than minimal differences in price, features, functionality and quantity, we will provide Maintenance for Licensor Software in any Virtualized Environment if the following criteria are met:
The operating system running in the Virtualized Environment is supported by TIBCO for Licensor Software version in question, and
The Virtualized Environment being used is officially certified and approved by the operating system vendor in question, and
The Virtualized Environment presents a true image of the native operating system.

TIBCO does not make any claims for the performance of Licensor Software running in a Virtualized Environment nor can we make any recommendations for optimal configuration of the Virtualized Environment in question.

Should it become necessary to engage the Virtualized Environment vendor, it will be the responsibility of the Customer to open a service request with their vendor. TIBCO Support will provide reasonable assistance to the Customer or vendor as it relates to the use and understanding of Licensor Software in the case at hand.

4 TIBCO Support Web

It is recommended that the Customer establish and maintain an internal support organization to provide front line support services to their users and that all authorized contacts be trained on the TIBCO software products in classes provided by TIBCO Education, as reasonably required by TIBCO to enable the customer to support licensed TIBCO software products.

Step 1: Identify the assigned contacts within your company. Review your maintenance agreement to see how many contacts are authorized.

Step 2: Register assigned contacts and one management-level individual (for verification and escalation) by sending an email to support@tibco.com. Be sure to include the name, email address, physical address and phone number of each contact.

All contacts will be registered with our call tracking system and given access to TIBCO Support Web.

Step 3: Have all assigned contacts view the Support Overview Presentation as well as review the "Support Policies" section within TIBCO Support Web.

Additional information about Getting Started can be found at http://www.tibco.com/services/support/getting-started/default.jsp.

4.1 Opening a Service Request

There are two ways to report a problem:

- TIBCO Support Web (preferred method). Cases reported online are automatically entered into TIBCO's Call Tracking system and assigned a Service Request (SR) number. TIBCO requires that all Severity 1 cases be followed up with a phone call to our Technical Assistance Center (TAC) to ensure immediate attention to your issue.

- Phone. Each TIBCO customer is assigned a regional Technical Assistance Center (TAC) that they can contact to request support via phone. The support line phone number for each regional TAC in the America's, EMEA and APAC is published on the TIBCO Support Web. A service request will be created in TIBCO's call tracking system and an SR number is provided.

4.2 Processing a Service Request

Once a service request is submitted, the TAC specialist will review, access and assign the appropriate severity level. All severity 3 and 4 calls will be assigned to the appropriate product and workgroup where our technical support engineers will start working on the call on a First in – First out (FIFO) basis. TAC will notify support managers of any SRs that are assigned to Severity 1 or 2, so that they are handled in an escalated manner. The TIBCO Support Engineer will communicate with the customer until the issue is resolved. Depending on the nature of a Service Request, a Service Request can be resolved by a Support Engineer or logged by a Support Engineer as bugs/enhancements with product engineering.

TIBCO support level and responsibilities:

- First level (Technical Assistance Center):
  - Review Service Requests reported by Web, Email or phone from a customer authorized contact
  - Validate customer maintenance status, product entitlement and check for any special handling required.
  - Identify type of request, problem definition, configuration, products, product versions and platforms.
  - Determine severity of the problem and execute any escalation procedures necessary.
  - Direct problems for resolution to workgroups

- Second level (Product Support):
  - Confirm problem and configuration used by the customer
  - Evaluate against known problems or issues
  - Stage the problem
  - Reproduce problems and provide workarounds
  - Escalate to engineering where required to develop patches and fixes
  - Keep the SR updated at all times within the Call Tracking system
  - Keep the customer Authorized Contact updated on the progress

- Third level (Engineering):
  - Develop fixes as needed
  - Test and verify functionality and performance
  - Update the source code control system as needed
  - Ensure patches and fixes are incorporated into a future product release
4.3 Escalations

Special procedures apply to Service Request escalations. An escalated issue is generally one of the following:

- No response to a problem reported, within the designated time given by the call response coordinator or technical engineer
- Response times out of severity guidelines
- Customer dissatisfaction with Service Request resolution you’ve been given

North and South America  +1.650.846.5789
EMEA (Europe, Middle East, and Africa)  +44(0).870.909.3889
Asia and Australia  +61.2.4379.9322 or 1.800.184.237 (within Australia only)

The above telephone numbers provide access to a TIBCO Support Manager. This phone number is to be used if or when a customer is dissatisfied with the progress of problem resolution, or wants the problem reported brought to the attention of TIBCO’s management. If voicemail is reached, the customer should leave a message containing the company name, a contact telephone number, and estimated severity level for the issue. The voice mail will trigger an immediate page to a Support Manager, who will contact customer at the number left in the message.
4.4 TIBCO Support Web Login

4.5 Creating, Updating and Tracking a Service Request

4.6 User Profile
Authorized contacts are able to change their login password, update their phone numbers, select their time zone and subscribe to Product FAQ's and LBN in this section.
4.8  Product FAQs

4.9  Customer Project Profile

Each customer is encouraged to submit and maintain a detailed project profile that gives details about their TIBCO software implementation.

4.10  Additional Features

- Solution Subscription feature: By updating your User Profile, you now have the ability to receive notifications on any FAQ and/or LBN material we publish. This means that you can get the latest information about a known issue or the availability of hot fixes as soon as it is announced on any product of your choice. Please note that when you subscribe to a product, you will receive information published for that product as well as information published under the ‘All Products’ category.
- Reporting Capabilities: Generate basic reports on your service requests and download them in .csv or Excel format. This feature and its help function can be found in the upper right hand corner of the Support Web.
- Customer Satisfaction Survey: It is our goal to continuously improve the services we provide and a key part of this process is to hear how we are doing from our customers. The valuable input we receive will help us spotlight areas where we need to focus more attention. Customer
Satisfaction Surveys are being conducted using the telephone by our global TAC team. They will contact customers who have recently completed a service request and will collect feedback on satisfaction measured on a 5-point scale (5-very satisfied; 1- Very Dissatisfied). Results will be shared with our support group directly by phone at 1.800.669.5006 (U.S. and Canada) or +1 614.791.1600 (Outside U.S. and Canada). The TIBCO Foresight support staff will then assign a tracking number if the email or phone call cannot be answered immediately. This tracking number allows the customer the ability to reference any and all enhancements and fixes targeted for the product.

5 TIBCO Spotfire Customer Support

Spotfire and S-Plus customers can submit technical support requests via the TIBCO Support Web portal. The Support Web site allows customers to create, track, and update your product Service Requests (SRs), Enhancement Requests, Knowledge base, Late Breaking News items and more. Customers with accounts on the TIBCO Support Web may login and submit Service Requests today.

6 TIBCO Foresight Customer Support

TIBCO Foresight customers can submit technical support requests via email to fssupport@tibco.com. Customers may also contact our support group directly by phone at 1.800.669.5006 (U.S. and Canada) or +1 614.791.1600 (Outside U.S. and Canada). The TIBCO Foresight support staff will then assign a tracking number if the email or phone call cannot be answered immediately. This tracking number allows the customer the ability to reference any and all enhancements and fixes targeted for the product.

7 Product Download Site

The electronic software delivery service found at http://download.tibco.com/tibco/ provides confirmed internet delivery and tracking of software and documentation packages to authorized customers. Use of this system requires a secure username and password. This service provides authorized users with a customized portal to access their TIBCO product entitlements. Customers can view products they have purchased (excluding products purchased from a TIBCO web store site), as well as products they have obtained for evaluation purposes (excluding products downloaded or obtained for evaluation from another TIBCO web site). Customers with a current maintenance contract will automatically be entitled to download new releases, product updates and service pack releases, during their active maintenance period. Additional information is available on the TIBCO Support Web at “Product Updates” under the “Support Policies” section. Any software downloaded from this site may only be used in accordance with the terms and conditions of your license agreement with TIBCO Software Inc.

8 tibbr® Support

tibbr® Support Customers are entitled to Maintenance Service for tibbr® at the Silver Maintenance Level unless otherwise stated in an Ordering Document, as well as access to the tibbr® Support Program, as described below, irrespective of the service level of Maintenance for any other Licensor Software products which Customer might have licensed and provided that all tibbr® Product Line Licensor Software products licensed by Customer are subject to tibbr® Support.

8.1 tibbr® Support Program

This Program is intended to support Customers through the adoption of tibbr® within their organization. As part of this Program, Customers will be supported in their ongoing usage of tibbr® with responses to questions regarding technical issues, usage best practices and how to best implement the product.

The tibbr® Support Program is provided by TIBCO upon Customer’s request, subject to availability of resources and on a reasonable effort basis. TIBCO will make reasonable endeavours to meet Customer’s requests for assistance but provides no assurance that this service will be delivered on specific dates. TIBCO reserves the right to modify, reduce or increase the tasks included in the Program. Service Requests can be opened either through the TIBCO Support Web or by phone.

TSFI EULA Appendix D – Equipment Maintenance Program Guide

1. Overview

This Equipment Maintenance Program Guide (“Equipment MPG”) sets forth the terms and conditions by which TIBCO shall provide, and its customers shall receive, Maintenance for Equipment.

Maintenance services are optional and are available at the Bronze and Silver levels. Software Maintenance is determined by the level of Equipment Maintenance purchased, i.e. Maintenance levels for Equipment Software must be equal to the Maintenance levels for the corresponding Equipment, e.g. Silver level Equipment Maintenance will include Silver level Software Maintenance for the Equipment Software.

Maintenance for Equipment Software is subject to the Maintenance Program Guide located at Appendix C (“MPG”). In the event of a conflict between the MPG and this Equipment MPG, where such conflict pertains to Equipment, this Equipment MPG shall prevail.

2. Equipment Maintenance Service Levels

<table>
<thead>
<tr>
<th>MAINTENANCE LEVEL</th>
<th>Bronze (includes Updates)</th>
<th>Silver (includes Updates)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Service Hours:

<table>
<thead>
<tr>
<th>Time</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 a.m. - 5 p.m.</td>
<td>Monday-Friday</td>
</tr>
</tbody>
</table>

Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.

<table>
<thead>
<tr>
<th>Initial Response:</th>
<th>24 Hours/Day, 7 Days/Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1 &amp; 2:</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Severity 3:</td>
<td>Next Major Release</td>
</tr>
<tr>
<td>Severity 1 &amp; 2:</td>
<td>4 Hours</td>
</tr>
<tr>
<td>Severity 3:</td>
<td>Next Major Release</td>
</tr>
</tbody>
</table>

### 3. Equipment Maintenance Terms and Conditions

3.1. Equipment Maintenance - Scope. This Section 3 applies to Maintenance of Equipment, specifically excluding Maintenance for the TIBCO Messaging Appliance™ ("TMA"), and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below. TMA Maintenance terms are set forth in Section 4 below.

3.2. Equipment/Component Repair or Replacement Protection. During the Maintenance term, for all Equipment Maintenance levels, and subject to Customer’s compliance with the Agreement, TIBCO shall, at its sole option, either repair or replace the covered Equipment or component thereof that TIBCO can confirm is causing an error.

3.3. Contacting Support; Troubleshooting. Upon discovering an error, Customer must promptly first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the Equipment. Prior to scheduling Equipment replacement or repair, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in Section 6 below.

### 3.4. On-site Equipment Repair Process.

3.4.1. On-site repair support is available solely for TIBCO LogLogic® Security Event Manager ("SEM") and TIBCO LogLogic® Security Event Viewer ("SEV") Customers in the United States and Europe.

3.4.2. If TIBCO determines that the Equipment or component thereof may be repaired at Customer’s location, TIBCO will endeavor to dispatch a TIBCO (or TIBCO-contracted) technician to the Customer’s location by the next business day; provided, however, that Customer must immediately notify TIBCO in writing in advance if the Equipment is located in an area with restricted access which may require a technician with special qualifications. In such instance, TIBCO will use commercially reasonable efforts to locate and contract, if necessary and at Customer’s expense, a technician with such special qualifications; provided that Customer understands and agrees that any reasonable delay or failure in procuring such technician shall not constitute a breach of the Agreement.

3.5. Equipment Replacement – Processes and Procedures. Except as otherwise provided in Section 3.4 above, TIBCO will take all commercially reasonable steps to replace the Equipment or component thereof, as applicable; provided that Customers follow the return material authorization ("RMA") procedure described in this Section 3.5. In the event that TIBCO recommends replacement of a component, TIBCO will provide Customer with instructions for theremoval of the component and the installation of the replacement component.

3.5.1. Customer must obtain an RMA from TIBCO prior to returning any Equipment to TIBCO. Customer may request an RMA by telephone (1-800-957-LOGS) or by email at support@loglogic.com. Customer must provide the following information related to every Equipment or component thereof to be returned:

- Model number, and serial number, eth0 MAC address or Tag ID of the Equipment, and, if returning an Equipment component, a description of such component;
- Sender’s name, telephone, email address and fax number;
- Reason for return, i.e. a description of the error; and
- Ship-to address, including contact name, email address and phone number of the individual to receive the TIBCO replacement Equipment.
3.5.2. If the RMA is received, authorized and processed by TIBCO before 2 PM Pacific Standard Time (USA) or 2PM UK (GMT) Time, TIBCO will ship replacement Equipment: (1) on the same business day where the Equipment or component to be replaced does not require customization; and (2) within forty-eight (48) business hours where the replacement Equipment requires customization. Non-customized shipped replacement Equipment or components will be factory-default/off-the-shelf. Any shipped repaired or replaced Equipment or components may be refurbished or include refurbished components.

3.5.3. TIBCO will ship replacement Equipment for next local business day standard delivery to Customer’s location free of freight charges. Unless otherwise specified or agreed upon, factory default/off-the-shelf Equipment will be shipped with the latest Software.

3.5.4. TIBCO will provide Customer with a shipping account number or prepaid shipping label to use for purposes of returning defective Equipment or components. While Customer is not obligated to return defective Equipment or components before TIBCO will ship replacements, Customer is nonetheless required to ensure that the returned Equipment is received by, or is in transit to, TIBCO or its designee within ten (10) business days of Customer’s receipt of the replacement Equipment.

3.5.5. TIBCO strongly recommends that Customer keep all original packing material received with the Equipment for use in any Equipment return. If Customer no longer has the original packaging, Customer may request that TIBCO send replacement packaging at Customer’s cost. Customer shall also be wholly responsible for any damage or loss of the Equipment in transit; TIBCO recommends that Customer procure sufficient insurance before shipping Equipment to TIBCO.

3.5.6. Customer acknowledges that Customer-returned Equipment shall become the property of TIBCO upon delivery to TIBCO.

3.6. Keep Your Hard Drive Option: For an annual additional fee, Customers may purchase an option to “Keep Your Hard Drive,” entitling Customer to retain the defective hard drive(s). Subject to compliance with instructions provided by TIBCO, Customer may extract and retain or destroy the original hard drives from the Equipment. In no instance may Customer transfer, connect or otherwise use any drive(s) from returned Equipment in the replacement Equipment; doing so will result in Customer’s breach of the Agreement, and will void TIBCO’s warranty obligations.

3.7. Extended Support: Extended support for Equipment is available, subject to Section 3.10 of the MPG (TIBCO Extended Support Program).

4. TMA Maintenance Terms and Conditions

4.1. TMA Maintenance – Scope. This Section 4 applies solely to the TMA, and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below.

4.2. TMA Replacement Protection. During the Maintenance term, and subject to Customer’s compliance with the terms and conditions of the Agreement, under Silver Equipment level Maintenance, TIBCO will provide a permanent replacement of the TMA. Certain features, such as interface standards, product footprint and mobility, firmware and software compatibility may not be available.

4.3. Contacting Support; Troubleshooting. When experiencing a problem, Customer must first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the TMA. Prior to scheduling advance replacement of the TMA, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in this Section 4 and in Section 6 below. Customer will be required to provide a credit card number or purchase order number.

4.4. TMA Replacement – Processes and Procedures. If the problem cannot be resolved remotely, TIBCO will replace the failed TMA provided that Customers follow the procedure described below.

4.4.1. Prior to returning the failed TMA, Customer must:

a) perform all steps for self-test and trouble-shooting specified in the operating manual for the TMA;

b) provide to TIBCO, in writing, the model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable).

4.4.2. Promptly following completion of Customer’s obligations under Section 4.4.1, TIBCO or its authorized third party will ship the replacement TMA to Customer’s location free of freight charges. The replacement TMA will be shipped in a suitable container and include instructions for returning the failed TMA. Packaging instructions and a prepaid shipping label for the return of the failed TMA will be included in replacement TMA shipping container. At TIBCO’s discretion, TIBCO or TIBCO’s authorized third party provider may elect to collect failed TMA at your location.

4.4.3. The replacement TMA will be a new or a refurbished TMA.

4.4.4. To return the failed TMA, Customer must:

a) unless Customer will deliver the failed TMA to TIBCO in person, package the failed TMA carefully in the original shipping container, or a shipping container that prevents the TMA from being damaged while in transit to TIBCO or TIBCO’s authorized third party provider.

b) ship the failed TMA to TIBCO or TIBCO’s third party provider (as directed by TIBCO) within three (3) business days of receipt of the replacement TMA and obtain a prepaid insurance receipt to be retained by Customer as proof of shipment to TIBCO.

4.4.5. If TIBCO or TIBCO’s third party provider does not receive the failed TMA within fifteen (15) days of Customer’s receipt of the replacement TMA, TIBCO reserves the right to institute any available legal action related to the failure to return the TMA.

4.4.6. The returned TMA shall become the property of TIBCO or TIBCO’s third party provider upon receipt.
4.5. Support Limitations:

4.5.1. At TIBCO’s sole discretion, Maintenance will be provided using remote diagnosis and or other service delivery methods. Other service delivery methods, in lieu of shipping replacement Equipment, may include the overnight shipment of parts specified as Customer replaceable by TIBCO. TIBCO will determine the appropriate delivery method required.

4.6. The following services are specifically excluded from TMA Maintenance:

- Diagnosis or Maintenance at the Customer site.
- Set-up and installation of the replacement TMA or replacement parts at the Customer site.

5. Maintenance Exclusions

5.1. Third Parties. Customer acknowledges and agrees that TIBCO may subcontract Maintenance services for the Equipment, in TIBCO’s sole discretion, to a third-party authorized provider; TIBCO will remain responsible for ensuring that the Equipment Maintenance obligations under this Agreement are fulfilled.

5.2. Equipment Maintenance specifically excludes:

- Recovery of the operating system, other software, parameters and data.
- Troubleshooting for interconnectivity or compatibility problems.
- Services required due to failure of Customer to incorporate any system or software fix, repair, patch, or modification provided to the Customer by TIBCO.
- Services required due to failure of the Customer to take avoidance action previously advised by TIBCO.
- User preventative maintenance.
- Damage caused by failure of Customer to follow manufacturer’s recommended maintenance or operating specifications, or caused by Customer’s misuse, negligence or abuse.
- Damage caused by environmental causes at Customer’s location, such as poor ventilation, improper storage, power failures or surges.
- Damage due events outside of TIBCO's control, including fire, flood, act of god, war or nuclear incident or terrorism.
- Data, business interruptions, obsolescence, cosmetic damage, rust, change in color, texture or finish, wear and tear, gradual deterioration or any damage that does not affect the Equipment functionality.
- Fraud or theft.
- Alteration or modification of the Equipment in any way, not specifically directed in writing by TIBCO; repairs or alterations made by an unauthorized technician or user; damages caused by combination of Software with third party hardware or software.
- Transit or relocation of Equipment by Customer, including any damages occurring while in transit or related to such relocation, and services accompanying or related to transit or relocation of the Equipment.

6. Customer Responsibilities

Customer will be required, upon TIBCO’s request, to support resolving any problem reported under Maintenance remotely by:

- Providing all information necessary for TIBCO to deliver timely and professional remote support and/or to enable TIBCO to determine the level of support eligibility.
- Starting self tests and/or other diagnostic tools and programs.
- Performing other reasonable activities to help TIBCO identify or resolve the problem.
- Customer must acknowledge receipt of replacement Equipment by signing freight carrier air bill at time of delivery.
- Customer is responsible for installing all replacement Equipment (or components thereof) in a timely manner.
- Customer is solely responsible for backing up all copies of its Licensed Software and data.
- Customer shall restore software and data on the Equipment after the repair or replacement.
- Customer is responsible for the installation of any software not provided by TIBCO with the Equipment and insure all software installed on the Equipment is appropriately licensed and compatible with the Equipment.
- Where Customer is not a Government End User, Customer acknowledges that in the event that diagnosis by TIBCO reveals that the error is not caused by the Equipment that TIBCO may charge Customer the then-current GSA Schedule rate for such diagnosis.
- In the event of that the Equipment or TMA is retired, Customer may need to upgrade its Equipment or TMA in order to ensure performance of the applicable Software.

7. Equipment End of Life and End of Sale:

As part of the normal product lifecycle, TIBCO will announce the date of which an Equipment will become End of Life (“EOL”) which such announcement will also include a date for the End of Sale (“EOS”) of such Equipment. For clarity, this Section 7 applies to EOL of Equipment only, specifically excluding TMA. An EOL means that TIBCO will no longer provide Maintenance for such Equipment. EOS means that such Equipment will not be available for purchase.

TIBCO shall EOL an Equipment three (3) years following the EOS date, at which point all Maintenance services for such Equipment shall terminate.

TIBCO Software Inc.
Terms of Use for United States Federal Government Users

PLEASE READ THE FOLLOWING TERMS OF USE (“TERMS”) CAREFULLY.
TIBCO SOFTWARE INC. AND ITS AFFILIATES ("TIBCO" OR "WE") PROVIDE THIS WEBSITE TO YOU, YOUR EMPLOYEES, AGENTS AND CONTRACTORS SUBJECT TO THESE TERMS. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT USE THIS WEBSITE.

1. TIBCO Software Inc.: Our Services to You
We are a leading enabler of real-time business and the world's largest independent business integration software company. The Site offers access to products, support and services downloads, including documentation downloads, tutorials, a knowledge repository, information about special events, and user forums. The Site is intended for use by customers, partners and guest users. TIBCO customers generally have access to the entire Site. However, TIBCO’s Team TIBCO partners and other alliance partners specifically designated by TIBCO (“Partners”) may have access to additional material exclusively for Partners. Guest users have limited access to certain portions of the Site.

2. RESERVED.

3. User Registration and Access
You agree to (i) provide accurate, current and complete information in any registration form(s); (ii) maintain the security of your password and identification; (iii) maintain and promptly update the registration data and any other information you provide, to keep it accurate, current and complete; and (iv) accept all risks of unauthorized access to information and registration data using your password and/or identification. You are responsible for all activities that occur under your account. TIBCO will not be liable for any loss that you may incur as a result of anyone using your password or account, either with or without your knowledge. However, you could be liable for losses incurred by TIBCO or another party due to someone else using your account or password. You agree that you will not misuse or abuse account access and passwords, including, without limitation, giving access to third parties or allowing third parties to gain access to information from the Site through you. Please see our Privacy Statement for more information on the treatment of your information.

4. Restrictions On Use Of The Site And Its Content
The Site is owned and operated by TIBCO. All materials appearing on the Site, including the text, video, files, site design, logos, graphics, icons and images, as well as the selection, assembly and arrangement thereof, are the sole property of TIBCO and its licensors. You may view, download, print and use all or portions of the text and video on the Site solely for your internal use. However, any technical information that you download is also governed by the terms and conditions of your written software license agreement or partnership agreement with TIBCO, whichever is applicable. White papers may be distributed only in connection with the furtherance of TIBCO business in connection with your partnership with TIBCO.

Portions of the Site offer you the opportunity to download certain software ("Available Software") as well as files that are uploaded to the Site by users ("Files"). Any Files and Available Software that you download from the Site are governed by the terms and conditions of your written agreement for downloading such Files or the written software license agreement, whichever is applicable.

Except as may otherwise be provided for in a written agreement with TIBCO or with respect to the Files or Available Software you download from the Site, any other copying, modification, performance, display, incorporation into any other Web site or other work, mirroring the Site, redistribution, retransmission or publication of any downloaded material is strictly prohibited without TIBCO's express written consent. You agree not to change or delete any copyright, trademark or other proprietary notices from any documents, files, other content or Available Software. You must give TIBCO prior written notice if you wish to link any other web page, etc. to the Site. Such notice should be sent to tibcommunity@tibco.com. We reserve the right to refuse anyone permission to link to the Site, for any or no reason.

5. Rules of User Conduct
Portions of the Site allow you to post material and/or upload Files. You agree to post, send and receive only messages and material that are proper and related to the Site. By posting information or Files in or otherwise using any communications service, forum, message board, newsgroup, software library or other interactive service that may be available to you on or through the Site, you agree that you will not upload, post or otherwise distribute or facilitate distribution of any content -- including text, Files, communications, software, images, sounds, data or other information (collectively, "Content") - - that:

a. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, embarrassing, disruptive, infringing, obscene, objectionable, fraudulent, invasive of another's privacy (including stalking), tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals) or otherwise violates these Terms, the Privacy Statement, or the legal rights of others;

b. you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);

c. victimizes, harasses, degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;

d. infringes on any patent, trademark, trade secret, copyright, right of publicity or other proprietary right of any party;

e. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), chain letters, any other form of unauthorized solicitation or any form of lottery, gambling, survey or illegal or unauthorized schemes;

f. contains software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage or limit the functioning of any software, hardware or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;

g. interferes with or disrupts our services or servers or networks connected to the Site;
h. intentionally or unintentionally violates any applicable local, state, national or international law, including, but not limited to, United States export laws and the export and import laws of other countries, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;

i. collects or stores personal data about other users; or

j. impersonates any person or entity, including any employee or representative of TIBCO or otherwise misrepresents your affiliation with a person or entity.

6. Site Content

TIBCO does not control, screen or endorse communications on the Site and is not responsible for screening or monitoring information or materials posted by users of communications services, forums, chat rooms, message boards, newsgroups, software libraries or other interactive services that may be available on or through the Site. We may or may not elect to screen, monitor or edit Content. We and our agents reserve the right at our sole discretion to review any communication and to take any steps we deem appropriate to restrict, edit or remove any Content that, in our judgment, does not comply with these Terms or is otherwise harmful, objectionable or inaccurate. We are not responsible for any failure or delay in performing such activities. TIBCO does not guarantee the accuracy, reliability or truthfulness of any material posted by users. Any opinions are those of the user who posted them, not TIBCO's.

It is your responsibility to take all steps necessary to protect your systems from viruses, worms, and other destructive code, and to backup your systems.

Any Content, including but not limited to questions, comments, suggestions, ideas, data, materials, information or Files, that you provide to TIBCO or are on the Site shall not be regarded as confidential, and neither TIBCO nor any other user has any obligation of any kind to you in connection therewith. TIBCO is free to use, disclose, distribute, display, reproduce, perform, and/or create derivative works from, and to sublicense others to do so, any Content without limitation. TIBCO shall have the right to use any ideas, concepts, know-how, data or techniques contained in any Content for any purpose whatsoever.

7. Submissions

We welcome your comments and feedback regarding the Site. However, we do not want and cannot accept any ideas, materials or suggestions you, or someone else, consider to be confidential or proprietary. Accordingly, all comments, feedback, ideas, suggestions and other similar submissions disclosed, submitted or offered to TIBCO using the Site or otherwise (collectively, "Submissions") are not confidential and will become and remain our property. We shall be entitled to use, display, publish, reproduce, modify, transmit, sublicense, translate and create derivative works from and distribute these Submissions in any medium and through any method of distribution, transmission or display for any purpose whatsoever, commercial or otherwise, without compensation or any other obligation to the provider of the Submissions.

8. License

All Files that are uploaded to the Site become public information. By uploading Files, you grant to TIBCO and all other users a royalty-free, perpetual, irrevocable, nonexclusive, transferable, worldwide license to use, reproduce, modify, publish, translate, distribute, perform and display such Files alone or as part of other works in any form, media or technology, whether now known or hereafter developed. No compensation will be paid for Files.

9. No Advice or Recommendations

The Site offers information, tools and resources to provide a better understanding of TIBCO's products and services to customers, potential customers, partners and other affiliates. TIBCO has no obligation to respond to any requests for information or assistance. We may or may not, in our discretion, provide information or assist users of the Site or software. We do not provide business advice through the Site or through any services offered on the Site, including but not limited to, any return-on-investment information, white papers, etc.

10. Links and Third Party Content

The Site may contain links to other sites on the Internet that are owned and operated by third party vendors and other third parties. We are providing these links solely as a convenience. The appearance of a link does not imply our endorsement of the link/site, nor are we responsible for the content of any linked site. You access linked sites at your own risk.

Certain content from third party vendors may be made available as part of the Site. This content is believed to be reliable, but we do not endorse or guarantee the accuracy or completeness of this content.

11. Termination of Site; Usage; Disclosure

This site is provided at no charge as a convenience and resource by TIBCO for its customers – commercial and government alike. TIBCO is under no obligation to continue its operation of this site or to maintain particular materials or resources upon it. In the event that TIBCO ceases to operate or maintain this site, such action will not in any way affect the rights of United States Government customers regarding TIBCO licenses or services obtained under contract or any obligations of TIBCO with regard to the same. We may suspend your access to all or part of the Site with notice for any conduct that we believe is in violation of any applicable law or poses a danger of inoperability of the Site. TIBCO reserves the right to disclose any information it deems necessary to satisfy any applicable law, regulation, legal process or governmental request.

12. Disclaimers

The Content and information contained in the Site may contain inaccuracies or typographical errors, and may be changed, updated or removed without notice. We cannot guarantee that the Content or other information provided through the Site will be accurate or up-to-date. We reserve the right without prior notice to discontinue or change the specifications on products and services offered on the Site without obligation. From time to time, we may make
suggestions or recommendations about certain products or services. However, we make no guarantee as to your satisfaction with our suggestions or recommendations or that the suggested or recommended products or services will meet your expectations.

THE SITE AND THE CONTENT ON THE SITE ARE PROVIDED BY TIBCO ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. TIBCO DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE, VALIDITY, ACCURACY, OR RELIABILITY OF, OR THE RESULTS OF THE USE OF, OR OTHERWISE RESPECTING, THE CONTENT ON THE SITE OR ANY WEB SITES LINKED TO THE SITE. WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AS TO THE OPERATION OF THE SITE, AND THE INFORMATION, CONTENT, MATERIALS OR VEHICLES INCLUDED ON THE SITE. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitations and exclusions may not apply to you.

No waiver by either party of any of these Terms, or any breach by the other party of any of the provisions of these Terms, shall be construed as a waiver of that or any other provision on any other occasion.

13. Limitation of Liability

TIBCO SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR ANY DAMAGES OF ANY KIND RELATING TO THE USE OF, OR INABILITY TO USE, THE SITE, ITS CONTENT, MATERIALS OR LINKS, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT, RELIANCE, CONSEQUENTIAL OR PUNITIVE DAMAGES. THIS LIMITATION WILL APPLY EVEN IF TIBCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND EVEN IF ANY WARRANTY OR REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE TOTAL LIABILITY OF TIBCO WILL BE LIMITED TO THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING OR USING THE SITE. ANY CLAIMS RELATING TO MATERIALS DOWNLOADED PURSUANT TO A SEPARATE LICENSE ARE GOVERNED SOLELY BY THAT LICENSE.

14. Warranties You Make

By posting Files and/or Content to the Site, you warrant and represent that you own or otherwise control all rights in and to such Files or Content, including the copyright, and that you have the rights necessary to grant the licenses and sublicenses described in these Terms. By posting and/or downloading Files and/or Content to or from the Site, or otherwise accessing the Site, you warrant and represent that you are not located in any U.S. embargoed country, under control of, or a national or resident of, any such country or on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List.

15. RESERVED

16. Compliance with Laws

You agree to comply with all applicable laws regarding the transmission of technical data and software exported from the United States and the export and import laws of the country in which you reside. We may, in our sole discretion, report actual or perceived violations of law to law enforcement or other appropriate authorities. If we become aware, through a complaint or otherwise, of any potential or suspected violation of these Terms or the Privacy Statement, we may (but are not obligated to) conduct an investigation to determine the nature and extent of the suspected violation and the appropriate enforcement action, during which investigation we may suspend services to any customer being investigated and/or remove any material from our servers. You agree to cooperate fully with any such investigation. You acknowledge that violations of these Terms or the Privacy Statement could subject you to criminal or civil penalties.

17. Special Admonitions for International Use

The Site can be accessed from many countries, and may contain references to TIBCO products, programs and services that have not been announced in such countries. These references do not imply that TIBCO intends to announce or make such products, programs or services available in any particular country.

18. Applicable Law

The Site is controlled by TIBCO from its offices within the State of California, United States of America. For United States Government customers, the laws applicable to the interpretation of these Terms shall be applicable United States Federal law.

19. Disputes

Disputes between United States Government customers and TIBCO related to these terms shall be brought in a United States Federal court or adjudicative body of competent jurisdiction.

20. Privacy Statement

We consider the privacy of our users to be paramount, and we have developed a privacy policy to protect and inform our users. Our current Privacy Statement available at http://www.tibco.com/privacy.jsp is incorporated herein by reference and made part of these Terms.

21. Disclosure

You acknowledge, consent and agree that TIBCO may access, preserve, and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of TIBCO, its customers and the public.

22. Notices
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Trend Micro Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant or applicable orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2i, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
I) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**TREND MICRO SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS**

1. **Not a Master Purchase Agreement; Agreed Definitions.**

1.1 **Reserved**
1.2 **Not a Master Purchase Agreement.** Ordering Activity acknowledges that this is NOT a master purchase agreement for subsequent purchases of Products, but rather, this Agreement and the underlying GSA Schedule Contract, Schedule Price List and applicable purchase order only applies to each instant purchase/license of Products by Ordering Activity. Each subsequent procurement/license of Products by Ordering Activity will be made subject to and conditioned on the agreement of the Parties to the then-current version of this Agreement unless otherwise agreed in a writing signed by the Parties.

1.3 **Procurement Under This Agreement.** Ordering Activity may secure Products under this Agreement by:

a. **Procurement Through a Reseller.** Reseller will provide to Ordering Activity a Quote based on prices set out in the Schedule Price List. Ordering Activity understands that if an Order is placed with a Reseller, the Reseller can place an order with Trend Micro for Products (either directly through Trend Micro or through a Trend Micro distributor) as requested by Ordering Activity. Except for the matters agreed in the first sentence of this paragraph between the Reseller and Ordering Activity, all other rights, obligations, terms, conditions, limitations, and exclusions regarding Products that are Ordered by Ordering Activity are exclusively set forth in this Agreement. All payments by Ordering Activity for Products will be made directly to the Reseller and never to Trend Micro. Ordering Activity acknowledges that each Reseller is an independent contractor and in no event or circumstance will any Reseller now or hereafter be deemed a joint venturer, partner, fiduciary, or agent of Trend Micro and NO Reseller has been or will be authorized or permitted to have a right to create any binding obligation, responsibility, duty, liability, warranty, guaranty, or any otherwise contract for or act on behalf of Trend Micro or waive or renounce any right of Trend Micro or modify any right, obligation, or agreement of Ordering Activity set forth in this Agreement.

b. **Reserved**

1.4 **Agreed Definitions.** In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in this Agreement (that include all policies, procedures, and Trend Micro websites made a part hereof) that are referenced/incorporated herein, the initially capitalized definitions, descriptions, and clarifications shall have the meanings set forth in this Section 1.4 (each is an “Agreed Definition”) and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

   “Affiliate” means as to a Party, each person that is Controlled by a Party, that Controls such Party, or that is under common Control with such Party. “Control” means the direct or indirect ownership of more than fifty percent (50%) of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

   “Appliance” means a hardware-based appliance designed and provided by Trend Micro as a Product that inseparably combines Hardware and Integrated Software to form a single purpose, unified device that provides capabilities, features, and functionalities as set forth in its Documentation. The Hardware portion of an Appliance may be sold, leased, rented, or loaned hereunder, whereas the Integrated Software portion of an Appliance is only licensed and never sold. Deep Discovery family of Appliances; ATP family of Appliances; Network VirusWall Enforcer family of Appliances; and TippingPoint family of Appliances are examples of Appliances available on the Effective Date of this Agreement.

   “Appliance Differing Terms” shall have the meaning set forth in Section 4.

   “Applicable Laws” means all mandatory national, Federal, provincial, state, municipal, and local laws, statutes, acts, ordinances, regulations, rules, codes, treaties, executive orders, supervisory requirements, official directives, circulars, opinions, interpretive letters, and other official releases in the Territory that are applicable from time-to-time to a Party’s performance of its obligations and/or exercise of its rights hereunder, including data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

   “Communications” shall have the meaning set forth in Section 9.

   “Ordering Activity” means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts.

   “Computer” means a Virtual Machine or physical device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, including without limitation mainframes, Servers, workstations, desktop computers, laptops, tablets, mobile devices, telecommunication devices, Internet-connected devices, and hardware products capable of operating a wide variety of productivity, entertainment, business, security, and/or other software applications.

   “Confidential Information” shall have the meaning set forth in Section 10.

   “Contractor” is an independent contractor that provides services in support of Ordering Activity and/or its Affiliates with respect to any Products provided hereunder pursuant to a written agreement between such person and Ordering Activity that imposes an obligation (among other obligations) on such Contractor to fully comply with this Agreement to the extent of access to, possession of, and/or use of any Product by such person. Such Contractor (and its services) may include, but are not limited to, Contractors: (a) that provide business process support, technical support, or outsourcing services to Ordering Activity; or (b) such as AWS, Microsoft Azure, Google Marketplace/Launcher, SoftLayer, and/or Rackspace that: (i) act as host or platform for Standalone Software that was Resold by such Contractor to Ordering Activity, but licensed to Ordering Activity hereunder; and/or (ii) act as host or platform for Standalone Software licensed to Ordering Activity hereunder that was originally acquired by Ordering Activity from a different Reseller (not the Contractor) or Trend Micro, all of the foregoing for the sole access, use, and benefit of Ordering Activity and/or its Affiliates in accordance herewith.

   “Controlled Technology” shall have the meaning set forth in Section 17.

   “Delivery Date,” “Delivered,” and “Delivery.” The Delivery Date shall be: (a) for Software, it is the date that Software is made available by Trend Micro for electronic download by Ordering Activity, and/or (b) for Hardware, the date of actual shipment to Ordering Activity, but some Appliances may be subject to different delivery terms as notified by Trend Micro. All Products and Maintenance will be deemed for all purposes to be Delivered in the country of Trend Micro’s place of business stated in the License Certificate.
“Different Terms” shall have the meaning set forth in Section 3.

“Documentation” means the printed, electronic, and online technical documentation and operating instructions generally made available by Trend Micro for Products provided for the purpose of supporting Ordering Activity’s internal business use of such Products as authorized in Section 2.1.

“Government Agency” shall have the meaning set forth in Section 18.

“Hardware” means the hardware product that Integrated Software is embedded in or preloaded on by Trend Micro and sold as an Appliance and all Documentation therefor.

“Instance” means an image of software on a physical device or Virtual Machine that is created by executing the software’s setup or install procedure or by duplicating an existing Instance.

“Integrated Software” means the object code version of any Trend Micro-published/branded applications software that is embedded in or preloaded on Hardware by Trend Micro to form an Appliance. Integrated Software is licensed hereunder (and no right, title, or interest therein is sold) for a Subscription Period that is no longer than the life of the Appliance and is not re-deployable to replacement Hardware except as may be specifically permitted herein.

“IP Claim” means any suit, cause of action, or other legal proceeding filed/brought against Ordering Activity by a third party in the courts of law, equity, or otherwise ONLY in the Territory, that asserts that Software licensed hereunder directly infringes any patent, copyright, and/or trademark of such third party.

“License Certificate” means a written (electronic or otherwise) acceptance/entitlement confirmation issued by Trend Micro to Ordering Activity with the license/purchase of Products that confirms to Ordering Activity the Products purchased by Ordering Activity, including the applicable Licensed Capacity where applicable. The License Certificate and this Agreement forms the entire agreement between Trend Micro and Ordering Activity with respect to each Order of Products that is accepted by Trend Micro. Ordering Activity is advised to retain the License Certificate as proof of its entitlement to such Products.

“Licensed Capacity” is defined (includes quantity, licensing metric, and term of license) as and notified in the License Certificate each time Standalone Software is licensed hereunder, the number of licenses of each type of Standalone Software that Ordering Activity purchases from time-to-time and is then-validated to Ordering Activity under this Agreement, based upon Trend Micro’s licensing measurement for each particular Standalone Software. The applicable licensing metrics/measurements (which may include measurement by Computer/CPU, Virtual Machine, device, node, Instance, Server, and user, as applicable) available to Ordering Activity for Standalone Software licensed hereunder will be determined and published by Trend Micro from time-to-time for each Product at https://www.trendmicro.com/en_us/about/legal/licensing-metrics.html.

“Licensing Entity” shall have the meaning set forth in Section 23.

“Maintenance” of Software shall have the meaning and description set forth in Section 5. The term Maintenance for Software does not include any PSP services or other premium, enhanced, technical, or engineering support services that may be provided by Trend Micro pursuant to a separate agreement or statement of work for additional compensation. Any maintenance or support of Hardware shall have the meaning and description set forth in applicable Appliance Differing Terms referenced in Section 4.

“Non-Production Environment” means Ordering Activity’s use of an Appliance and/or Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason.

“Order” means: (a) a purchase order or other ordering document issued by Ordering Activity in response to a Quote.

“Party” means each of the persons entering into this Agreement and all other persons such as Affiliates and Contractors of each Party that are third parties without rights or benefits hereunder.

“Perpetual Period” means a license granted for Standalone Software that extends for an indefinite period of time, subject to earlier termination in accordance herewith. For the avoidance of doubt, Standalone Software licensed for a Perpetual Period never includes a payment for, or a right to receive without additional fees or compensation, Maintenance for the entire Perpetual Period.

“Products” means and includes Software, Appliances (including Hardware), and Maintenance that is licensed/purchased hereunder, but does NOT include Trend Micro “software-as-a-service” and “cloud-based” service offerings that are provided under separate agreement.

“Quote(s)” means one or more documents issued by Trend Micro or its Reseller (as the case may be) to Ordering Activity specifying the Software, Appliance, and/or Maintenance that Ordering Activity seeks to obtain, the related pricing, payment terms, and Licensed Capacity and sufficient other information to complete the transaction. Each Quote shall incorporate this Agreement (specifically or by reference) as the sole basis and governing document for any procurement by Ordering Activity based on the Quote.

“Reseller” means a reseller, system integrator, service provider (such as AWS that hosts or provides platform services with respect to Software resold by it subject to this Agreement), independent software vendor, VAR, OEM or other channel partner that is authorized by Trend Micro or its distributor to secure orders for the license/sale of Products to end users, including Ordering Activity.

“Separate Modules” means any plug-in or module for Software that Trend Micro determines to be new or a different product/features/functionality that Trend Micro makes generally available to the public by license for new or additional consideration. Separate Modules are not included with Maintenance or Updates to existing Software.
“Server” means a computer or device (and deployed software) on a network that provides functionality, management, and/or support for other devices and/or other network resources, such as a web server, file server, a database server, or a print server.

“Software” means the object code version of Integrated Software, Standalone Software, and Test Software and includes all Documentation and Updates thereto made available to and purchased by Ordering Activity. In no event or circumstance will a source code version of any Software be offered, licensed, or otherwise provided hereunder to Ordering Activity.

“Software Limited Warranty” shall have the meaning set forth in Section 11.

“Standalone Software” means the object code version of any applications software (and Updates thereto) that is published by and is generally made available for license from Trend Micro hereunder that does not include any Hardware, nor is it licensed by Trend Micro as part of an Appliance. Standalone Software also includes Instances thereof that are licensed for deployment in a Virtual Machine environment.

“Subscription Period” means, only if available from Trend Micro for a specific version of Software, the limited term/increment of time (i.e., not a Perpetual Period) that the Software is licensed for use by Ordering Activity. Such Subscription Period may be offered by the week, month, or year (not to exceed three (3) years), during which period, the licensee has the right to use the Software (and receive Maintenance without additional cost) in accordance herewith. After expiration of the Subscription Period, a new Subscription Period or Perpetual Period license must be purchased in order to continue the use of the expired Software. Integrated Software is always licensed for the limited Subscription Period that expires and terminates at the end of such Subscription Period, unless such license is earlier terminated in accordance with this Agreement such as when the unit of Appliance on which such Software was originally installed is no longer deployed and used in accordance with the Appliance’s Documentation.

“Territory” means worldwide other than Japan, subject always to and limited by the terms, conditions, waivers, limitations, disclaimer, and exclusions in this Agreement, and present and future Applicable Laws that applies to the Products and/or the performance of either Party hereunder that prohibits or restricts Product sale, use, or access: (a) to certain territories; and/or (b) to specified countries; and/or (c) by defined persons.

“Test Period” shall have the meaning set forth in Section 7.1.

“Test Software” shall have the meaning set forth in Section 7.1.

“Test Use” or a “Test” shall have the meaning set forth in Section 7.1.

“Third Party Technology” shall have the meaning set forth in Section 3.

“Trend Micro” means in each instance that Products are acquired under this Agreement, the Licensing Entity that provides Products in such instance as determined by application of Section 23.

“Virtual Machine” means a software container, implementation, or emulation of a Computer (i.e., a physical device) that runs its own operating system and executes application programs like a physical Computer.

“Updates” means and includes if and when generally made available by Trend Micro with respect to Software licensed hereunder that is also subject to paid Maintenance, new object code versions (including patches) of such Software that includes: (a) improvement of features/functionality that is used to identify, detect, and block computer viruses, spam, spyware, malicious code, websites, or other forms of computer abuse generally categorized as malware and other forms of content identification or categorization; (b) corrections, modifications, revisions, patches, new definition files, maintenance updates, bug fixes and/or other enhancements to, or for use in connection with, the Software; and/or (c) major or minor new versions of existing Software that contains new features, improvements to existing features, capabilities, new features, and/or functionality that Trend Micro makes available to existing customers that have then-purchased Maintenance for such Software; provided, however, the term “Updates” specifically excludes Separate Modules and does not apply to the Hardware component of any Appliance. Updates that are released by Trend Micro from time to time replace or patch and will become part of previously licensed copies of the updated Software and will not increase the units/Licensed Capacity of Software licensed hereunder, or otherwise create additional copies or licenses of such Software, nor does any Update create any new or additional warranty for the Software it updates.

2. Software License: Right to Copy; Limitations

2.1 Software License. Products are protected by patent, copyright, trade secret, and/or other worldwide intellectual property Applicable Laws. On the terms and subject to Ordering Activity’s continuous compliance with the conditions set forth in this Agreement (including the License Certificate) and on the condition precedent of Ordering Activity making payment as directed in Section 1.3, Trend Micro hereby grants only to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5), a non-exclusive, non-transferable (except as may be a required in the European Union under mandatory Applicable Laws that do not permit a written waiver or limitation), non-assignable (by operation of law or otherwise), and revocable (in accordance herewith) right and license (with no right to sublicense) in the Territory to: (a) install or have installed (on Computers owned by or under the control of Ordering Activity through written agreement with a Contractor), access, and use Standalone Software only as permitted in its Documentation, each of the foregoing for the stated Subscription Period (unless the License Certificate states that such Standalone Software is being licensed for a Perpetual Period) and in such Licensed Capacity as is listed in the License Certificate; or (b) use Integrated Software (only as permitted in its Documentation) forming a part of any Appliance purchased hereunder only for such limited time (not for a Perpetual Period) as it forms a part of the unit of Appliance that it is originally shipped by Trend Micro to Ordering Activity.

2.2 Right to Copy. Ordering Activity shall have the right to reproduce, without additional cost, a commercially reasonable number of copies of the Standalone Software (in an unmodified form) and its Documentation that is licensed to Ordering Activity only for backup/failover, archive, and/or training purposes, provided that Ordering Activity reproduces or in such copies any and all of the copyright, trademark, patent, and other proprietary notices or markings that appear on the original copy of the Standalone Software (and Documentation). No copy of Standalone Software will be utilized for production purposes (other than backup/failover testing or archive retrieval) except for such time as the production copy of such Standalone Software is not being utilized for production use.
2.3 Limitations/Conditions. Except as may be specifically granted hereunder by license to Ordering Activity in this Section 2 or to the extent prohibited by or inconsistent with any Different Terms licensing Identified Components to Ordering Activity, Ordering Activity agrees that it is not licensed hereunder and/or as a condition hereunder, shall not (or otherwise) authorize others to undertake any of the foregoing prohibited acts; (b) merge or embed any Software with or in other software, sub-routines, or other binary code segments; (c) reverse engineer, reverse compile, decompile, or disassemble any Product or object code thereof, or otherwise attempt to decrypt, decode or discover the source code or underlying ideas or algorithms of any Software or part thereof, including but not limited to sub-routines, functions, libraries or other binary code segments of Software except and only to the minimum extent required to be permitted with respect to interoperability under mandatory Applicable Law without the possibility of waiver; (d) distribute, license, sublicense, lease, sell, rent, loan, mortgage, encumber, auction, or otherwise transfer or provide a copy of any Software (or components thereof including any license or access key or authorization) to any third party; (e) adapt, publish, or otherwise make available to any third party, any competitive, performance, or benchmark tests or analysis relating to the Software without the written permission of Trend Micro which may be withheld or conditioned at the sole discretion of Trend Micro; (f) deploy or use Software or Appliance in any manner other than as expressly permitted in its Documentation; (g) permit any third party to use or benefit from the use or functionality of any Product (alone or in combination with any other product or service) via, for instance, third party outsourcing facility or service, service bureau arrangement, time sharing basis, or as part of any other hosted or platform service that permits either access to or use of any Products, whether on a specific fee basis or otherwise; or (h) attempt to do any of the foregoing. Ordering Activity understands and agrees that all Software and Appliances are subject to End-of-Maintenance/Support policies forming a part of Trend Micro’s policies referenced in Sections 4 and 5 below.

2.4 Ownership. The Parties understand and agree that all Software is licensed and not sold hereunder. The Parties agree that, as between the Parties, all Software and its Documentation, and all worldwide intellectual property rights therein or related thereto, are the exclusive property of Trend Micro, its Affiliates, and/or its or their licensors/suppliers. All rights in and to Software not expressly granted to Ordering Activity in this Agreement are reserved by Trend Micro and Ordering Activity will have no other or different rights (implied, by estoppel, or otherwise) or privileges with respect to any Software. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of Trend Micro’s existing or future patents or other intellectual property rights. Trend Micro reserves the right to take any and all reasonable steps to prevent unauthorized access to, and use of, Software by any person.

2.5 Affiliate and/or Contractor Use. For no more than the Licensed Capacity purchased by or on behalf of Ordering Activity as evidenced in a License Certificate, Trend Micro grants Ordering Activity the right to authorize and permit (for no additional fees or amounts due Trend Micro other than the fees already payable with respect to licenses purchased by Ordering Activity): (a) Ordering Activity’s Affiliates to access, deploy, and/or utilize Products only in connection such Affiliate’s internal business operations for so long as such person remains an Affiliate of Ordering Activity; and (b) Contractors to Ordering Activity and/or its Affiliates to access, install, deploy, and/or utilize Products only in connection with the provision of services to and solely for the use and benefit of Ordering Activity and/or Affiliates in connection with its and their internal business operations and not for the benefit of any third party or such Contractor, all of the foregoing on the terms and subject to the limitations and conditions of this Agreement. Each Affiliate and Contractor having access to, possession of, and/or utilization of any Product will be considered an authorized user of Ordering Activity under this Agreement with respect to such Product and NOT a separate or additional licensee or otherwise having any rights or deemed to be a third party beneficiary hereunder in any event or circumstance. Ordering Activity agrees at all times to require, ensure, and enforce compliance with the grants, terms, conditions, and limitations set forth in this Agreement by Ordering Activity’s Affiliates and/or Contractors having access to Products procured hereunder and, further, Ordering Activity agrees that it shall at all times be and remain legally and financially responsible to Trend Micro for the compliance and non-compliance with, or breach of, this Agreement caused by any Affiliate or Contractor. For the avoidance of doubt, since all Maintenance is to be provided by Trend Micro only to Ordering Activity, no Affiliate and/or Contractor will be entitled to request or receive Maintenance directly from Trend Micro.

2.6 Use Exclusions. Products are not fault-tolerant/fail-safe and are not designed, intended, suitable, or licensed hereunder for, and may not be used, in situations or environments requiring extra safety features or functionality for fail-safe or fault-tolerant performance, such as: (a) the design, construction, or operation of any nuclear facility, manufacturing facilities, or industrial plants; (b) aircraft navigation, communications, or operating systems; (c) air traffic control systems; (d) operation of life-support or life-critical medical equipment; or (e) any other equipment or systems in which the circumvention, unavailability, inaccuracy, ineffectiveness, or failure of the Product could lead or contribute to death, personal injury, or physical property/environmental damage, and Trend Micro specifically excludes any right or license for any such use and disclaims any express or implied warranty/guarantee of fitness for any such use. Only as may be specifically set forth in the Documentation therefor, Trend Micro notifies Ordering Activity that no Product has been submitted for compliance testing, certification, or approval for any use by any governmental agency or consensus organization.

3. Open Source and Third Party Technology. The Software may come bundled or otherwise be distributed with open source or other third party software (herein “Third Party Technology”), that may be subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each “Different Terms”). Ordering Activity agrees to be bound only to the terms contained herein unless the Ordering Activity executes an agreement in writing with a third party vendor.

4. Appliances. Several Products available hereunder are Appliances. As such, each Appliance has certain terms and conditions applicable thereto that are in addition to, or different than, those set forth herein (all are “Appliance Differing Terms”). In the event Ordering Activity is licensing/acquiring/leasing/renting/testing/evaluating an Appliance hereunder, Ordering Activity agrees that the applicable Appliance Differing Terms are incorporated herein by reference and made a part hereof for all purposes. Appliance Differing Terms may include, among other things: a modified and/or different license grant and/or Maintenance for the Integrated Software that forms a part of the Appliance; Hardware warranty and ownership; and/or a description of available maintenance and support for Hardware and the Appliance in general. In the event of conflict between the terms and conditions in the body of this Agreement, and those Appliance Differing Terms, the applicable Appliance Differing Terms shall govern and control. Appliance Differing Terms are set forth in Exhibit A below.

5. Maintenance. All Standalone Software licensed for a limited term Subscription Period by Trend Micro includes paid Maintenance in the price of the license for the entire Subscription Period that is purchased by Ordering Activity. However, Standalone Software licensed for a Perpetual Period hereunder includes Maintenance only for a period of one (1) year from Delivery of the Standalone Software, thereafter, additional Maintenance then-offered by Trend Micro may be purchased for Standalone Software in one (1) year increments. The description of Maintenance and Trend Micro’s policies with respect to Standalone Software are set forth below in Exhibit B. The description of Maintenance and Trend Micro’s policies with respect to Integrated Software are set forth in the Appliance Differing Terms in Exhibit A.
6. **Applicable Laws.** To the extent applicable to Ordering Activity’s performance of its obligations and/or exercise of its rights hereunder, Ordering Activity represents (on an ongoing basis) and warrants to Trend Micro and agrees that Ordering Activity will: (1) comply with all Applicable Laws; and (2) identify, procure, and maintain any permits, certificates, approvals, consents, and inspections that may be required or advisable in order to comply with Applicable Laws with respect hereto. If Ordering Activity at any time is in breach of or non-compliance with this Section, Ordering Activity will promptly (at no cost Trend Micro) do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any Applicable Laws.

7. **Test/Evaluation of Appliances and/or Software.**

7.1 **Test/Evaluation.** If Standalone Software or Integrated Software is provided to Company under this Agreement that has been identified by Trend Micro as “Evaluation,” “Proof-of-Concept,” “Trial,” or “Test” Software (each “Test Software”), then the provisions of this Section 7 shall apply thereto and shall supersede any conflicting term or condition of this Agreement. In each of the foregoing instances, Company is granted a royalty-free, non-transferable, limited license to install the Test Software on Computers located in the country of Delivery and owned (unless an Appliance is provided by Trend Micro in connection with Test Use) by Company and only use the Test Software for evaluation of such Test Software in a Non-Production Environment (a “Test Use” or a “Test”) that is limited to thirty (30) days from the date the Test Software is Delivered to Company (or on the date that an Appliance is shipped to Company by Trend Micro for a Test) unless otherwise agreed in writing by Trend Micro (the “Test Period”). Sections 2.1, 2.2, and 2.5 of this Agreement do not apply to Test Software, but Sections 2.3, 2.4, and 2.6 do apply to Test Software. If the Test Use involves an Appliance (and Integrated Software), the Parties agree that the applicable Appliance Differing Terms below in Exhibit A, sets forth additional and/or different terms and conditions that are applicable to the Appliance and the Integrated Software that forms a part of that Test Use Appliance. During the Test Period, Company may be able to receive web or email based technical support in the country where Company is located, but otherwise support is not generally available for Test Software or Appliances.

7.2 **Exclusion: Limitation of Liability for Test Software.** TEST SOFTWARE MAY CONTAIN ERRORS OR OTHER PROBLEMS THAT COULD CAUSE SYSTEM OR OTHER FAILURES AND DATA LOSS. CONSEQUENTLY, TEST SOFTWARE IS PROVIDED TO COMPANY "AS IS; WITH ALL FAULTS." TREND MICRO SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY, GUARANTEE, AND/OR LIABILITY TO COMPANY OF ANY KIND OR NATURE WITH RESPECT TO TEST SOFTWARE AND ANY APPLIANCE ON WHICH THE TEST SOFTWARE IS DEPLOYED. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THIS DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO'S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THIS AGREEMENT RELATED TO TEST SOFTWARE AND ANY APPLIANCE ON WHICH THE TEST SOFTWARE IS DEPLOYED, SHALL BE LIMITED IN THE AGREEMENT TO THE SUM OF FIVE HUNDRED DOLLARS (USD$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY. Any information about the Test Software gathered from its access or use shall be used solely by Company for the test/evaluation and such information shall not be provided to any third party. Notwithstanding anything contained herein, each Party has the right to terminate any Test Use and the license herein granted at any time with or without reason with five (5) days prior written notice to the other Party. Upon expiration of the Test Period or earlier termination as set forth in this Section 7.2, Company agrees to immediately stop using the Test Software and uninstall, delete, and irretrievably destroy all copies of the Test Software and Documentation including those that may be included in any backup or archive files and shall promptly confirm same to Trend Micro in writing.

8. **Reserved.**

9. **Consent to Electronic and Other Communications.** Ordering Activity agrees that Trend Micro may send Ordering Activity required legal notices and other communications about Products (including Updates), other and/or new Trend Micro products and services, special offers and pricing or other similar information, customer surveys, and other requests for feedback (collectively “Communications”). Trend Micro may provide Communications via (among other methods): (a) in-person contacts by Trend Micro and/or Reseller personnel; (b) in-Product notices or email to registered email addresses of named Ordering Activity contacts; and/or (c) posted Communications on its Websites. By accepting this Agreement, Ordering Activity consents to receive all Communications through these means.

10. **Reserved.**

11. **Limited Warranty – Software.**

11.1 **Limited Warranty.** Trend Micro warrants to Ordering Activity only that on the initial Delivery Date of any Software licensed under this Agreement and for thirty (30) days after the Delivery Date therefor, that such Software when installed on compliant/compatible hardware and only as permitted in and in accordance with its Documentation (the “Software Limited Warranty”). Any replacement of non-conforming Software will be warranted for the remainder of its original Software Limited Warranty period. In the event that any Software does not comply with the foregoing warranty and such non-compliance is notified to Trend Micro within the warranty period, and if Trend Micro is unable to bring any Software into conformity with the Software Limited Warranty after using commercially reasonable efforts, either Ordering Activity or Trend Micro may (at the discretion of each) immediately terminate this Agreement for convenience (by giving written notice no later than ten (10) days after the end of the Software Limited Warranty Period) only as to the non-conforming Software. In the event the license is terminated as aforesaid, the license granted to Ordering Activity to such Software shall immediately terminate. Upon receipt of Ordering Activity’s certification that it has irretrievably destroyed such terminated Software, Trend Micro shall refund to Ordering Activity all fees paid by Ordering Activity for the affected Software. The applicable limited warranty provided by Trend Micro with respect to Integrated Software forming a part of an Appliance is available as directed in Section 4.

11.2 **Warranty Exclusions.** The Software Limited Warranty provided in this Section 11 does not apply to and shall be void: (a) in the event of failure of any Software arising or resulting from improper installation or any modification, alteration, or addition thereto, or any problem or error in the operating system software with which the Software is installed and is designed to operate; (b) if any problem or error in the Software has resulted from improper use, misapplication, or the use of the Software with other programs or services that have similar functions or features which are incompatible with the Software; (c) if licensed as Test Software for which Trend Micro does not charge a royalty or license fee; or (d) if Trend Micro does not receive notice of a non-conformity within the applicable warranty period.

11.3 **Exclusive Remedy.** The Parties agree that the rights, obligations, and remedies of the Parties in this Section 11 are in lieu and satisfaction of any right of acceptance/rejection of any Software that Ordering Activity may have under Applicable Law and Ordering Activity hereby waives and renounces any right of acceptance/rejection of all Software, it being understood that Ordering Activity is relying upon its rights under this Section 11.

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Parties agree that the warranties and remedies with respect to Software and Maintenance set forth in this Section 11 shall constitute Trend Micro's sole and exclusive obligation and liability and Ordering Activity's sole and exclusive right and remedy for the breach of or Software non-conformance with the Software Limited Warranty herein granted for any Software. ORDERING ACTIVITY UNDERSTANDS AND AGrees THAT TREND MICRO CANNOT, AND DOES NOT HEREIN, PROVIDE ANY ASSURANCE/GUARANTEE THAT THE DEPLOYMENT/USE OF ANY SOFTWARE (EITHER BY ITSELF OR IN COMBINATION WITH OTHER TREND MICRO PRODUCTS) WILL GUARANTEE/ASSURE COMPLETE/PERFECT PROTECTION FROM AND AGAINST ALL PRESENT AND FUTURE SECURITY THREATS TO ORDERING ACTIVITY'S NETWORKS, SYSTEMS, DEVICES, AND/OR DATA AND NOTHING HEREIN THIS AGREEMENT SHALL BE DEEMED TO IMPLY SUCH A GUARANTEE OR ASSURANCE.

11.4 Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, ORDERING ACTIVITY AGREES THAT TREND MICRO PROVIDES SOFTWARE "AS AVAILABLE" AND "AS IS, WITH ALL FAULTS" AND WITHOUT ANY OTHER WARRANTY OR GUARANTEE OF ANY KIND. TREND MICRO (ON BEHALF OF ITSELF AND ITS SUPPLIERS/LICENSES/RESELLERS) EXPRESSLY DISCLAIMS ANY CONDITIONS AND WARRANTIES (WHETHER STATUTORY, EXPRESS OR IMPLIED) OF: MERCHANTABILITY; FITNESS FOR A PARTICULAR OR GENERAL PURPOSE; TITLE; QUALITY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR OTHERWISE ARISING FROM A STATUTE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER; OR ANY WARRANTY AGAINST INTERFERENCE WITH ORDERING ACTIVITY'S QUIET ENJOYMENT OF ANY SOFTWARE. ORDERING ACTIVITY AND AGREES THAT TREND MICRO DOES NOT WARRANT OR GUARANTEE THAT: (a) SOFTWARE WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED; (b) THE FUNCTIONS AND FEATURES CONTAINED IN SOFTWARE WILL MEET THE REQUIREMENTS OF ORDERING ACTIVITY OR THAT SOFTWARE WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEEDS OR REQUIREMENTS OF ORDERING ACTIVITY; (c) SOFTWARE, UPDATES THERETO, OR MAINTENANCE THEREOF ARE FREE OF DEFECTS, PROBLEMS, BUGS, AND ERRORS OR THAT ALL DEFECTS, PROBLEMS, BUGS OR ERRORS WILL BE DETECTED OR CORRECTED; (d) SOFTWARE WILL DETECT ONLY, ANY, OR ALL SECURITY OR MALICIOUS CODE THREATS; OR (e) USE OF SOFTWARE AND UPDATES WILL KEEP ORDERING ACTIVITY’S NETWORKS OR COMPUTER SYSTEMS FREE FROM ALL VIRUSES OR OTHER MALICIOUS/UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY ATTACKS/BREACHES.

12. Reserved.

13. Reserved.

14. Privacy; Security Update.

14.1 Privacy. By using any Product or in connection with any Trend Micro Maintenance, Ordering Activity will cause certain information about Products and systems on which Products are deployed to be sent to Trend Micro owned/controlled servers strictly to improve services and functionality of the Software (e.g., to improve security scanning, malware identification and threat protection). Further information about what Trend Micro does with, and how it protects, certain information that Ordering Activity provides to Trend Micro is set forth in the Trend Micro Privacy Policy below in Exhibit C. Except where not permitted under mandatory Applicable Law in the European Economic Area (EEA), Ordering Activity hereby consents to the use and disclosure of its data in accordance with the Privacy Policy.

14.2 Security Acknowledgement. Trend Micro does not warrant or guarantee that Products will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that Ordering Activity does not use or want. Ordering Activity acknowledges that the success of security efforts and the operation and protection of its Computers, networks, and data are dependent on factors solely under Ordering Activity's control and responsibility, including, but not limited to: (a) the design, implementation, deployment, and use of hardware and software security tools in a coordinated effort to manage security threats; (b) the selection, implementation, and enforcement of appropriate internal security policies, procedures and controls regarding access, security, encryption, use, and transmission of data; (c) development of, and ongoing enforcement of, processes and procedures for the backup and recovery of any system, software, database, and any stored data; and (d) diligently and promptly downloading and installing all Updates to Products made available to Ordering Activity.

15. Assignability Severability. Ordering Activity and Trend Micro may not assign all or any portion of this Agreement, whether by contract, operation of law or otherwise, to any person, including any Affiliate, without written approval from the other party in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Ordering Activity agrees that if a court or other competent tribunal in any jurisdiction finds any provision of this Agreement invalid, such finding shall not affect any other provisions of the Agreement, which shall remain in full force and effect.

16. Waiver; Severability; Enforcement.

16.1 Waiver. A Party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the Party agreeing to the waiver.

16.2 Severability; Enforcement. The unenforceability of any provision or provisions of this Agreement shall not impair the enforceability of any other part of this Agreement. In the event that any provision of this Agreement conflicts with the governing law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable in whole or in part by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to the minimum extent necessary to render it valid, enforceable, and insofar as possible, reflect as nearly as possible the original intentions of the Parties. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable in accordance herewith.

17. Export/Import Control. The export or re-export of Software (and related technical data and services) and/or an Appliance (collectively "Controlled Technology") is subject to Applicable Laws with respect to the export (including "deemed export" and "deemed re-export" regulations) and import of Controlled Technology by Ordering Activity and/or its Affiliates. Ordering Activity agrees that it will at all times comply with each Applicable Law (now or hereafter in effect) that applies to direct/indirect export, re-export, or import of Controlled Technology by Ordering Activity and/or its Affiliates and/or the performance of Ordering Activity and/or its Affiliates hereunder that: (1) requires a license to, or otherwise prohibits the, export, re-export, import, diversion, or disclosure of such Controlled Technology; (2) prohibits or restricts sale, use, or access to certain technology/goods/services, to specified countries, and/or by defined persons; or (3) restricts or prohibits end-use of such Controlled Technology related to the development, production, use, or proliferation of nuclear, chemical or biological weapons, missiles, or other weapons of mass destruction. Ordering Activity represents
and warrants to Trend Micro that neither Ordering Activity nor any of its Affiliates are under the control of, located in, or a resident or national of any country or region subject to any embargo or applicable trade sanction and are not a prohibited person or entity as defined in any Applicable Law.

18. **Government Agency Use.** All Products (including Software and Appliances) and accompanying Documentation have been developed solely at private expense by Trend Micro and/or its suppliers/licensors, consisting of commercially-available computer software, commercially-available hardware and appliances, and commercially-available documentation. The acquisition, deployment, duplication, disclosure, and use of Software (as Updated) by any Government Agency may be subject to mandatory Applicable Laws, however, except for the limited license granted in Section 2 above to any Software, no right, title, or interest in or to any Software (or Updates and Documentation) is granted or transferred hereunder to any Government Agency licensing such Software. If any Government Agency requires or needs greater or different rights in or to Software other than those rights that are granted in Section 2, the Parties will discuss such additional requirements and the additional fees/charges applicable thereto, and if additional or different rights are agreed, the Parties will enter into a specific written agreement with respect thereto. In this Section, “Government Agency” shall mean a national, Federal, provincial, state, municipal, and/or local agency or entity in the Territory that acquires Products from Trend Micro under this Agreement for use by such Government Agency.


20. Reserved.

21. **No Third Party Beneficiaries.** This Agreement is entered into solely between and for the benefit of, and may be enforced only by, the Parties hereto and no third party shall have any right/benefit hereunder, whether arising hereunder, under any statute now or hereafter enacted (such as Contracts (Rights of Third Parties) Act of 1999 in the UK and similar laws enacted in Ireland, Singapore, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), or otherwise. This Agreement does not, and shall not be deemed to, create any express or implied rights, remedies, benefits, claims, or causes of action (legal, equitable or otherwise) in or on behalf of any third parties including employees, independent consultants, agents, suppliers, and Affiliates of a Party, or otherwise create any obligation or duty to any third party.

22. Reserved.

23. Reserved.

**EXHIBIT A – APPLIANCE DIFFERING TERMS**

**APPLIANCE DIFFERING TERMS FOR THE DEEP DISCOVERY FAMILY OF APPLIANCES**

1. **Introduction; Controlling Terms and Conditions.** If Ordering Activity is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “Agreement”) that is a Deep Discovery Appliance (as defined below), the Parties agree that such Appliance is provided under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into, and form a part of the Agreement with respect to such Appliance and together the referenced documents will solely govern and control the license/sale/use/deployment/maintenance/support of such Appliance and the included Integrated Software. In each instance in which the terms and provisions of these Appliance Differing Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance, the Integrated Software, and/or Microsoft Components, without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Appliance Differing Terms shall reference the respective section, schedule, attachment or exhibit of these Appliance Differing Terms. The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Appliance Differing Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), shall constitute the entire agreement of the Parties with respect to any license, sale, use, or any other right in or to such Appliance (or any component thereof) referenced herein that is made available to Ordering Activity by Trend Micro for Paid Use or Test Use and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and excluded herefrom by agreement of the Parties.

2. **Agreed Definitions.** The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

- **Custom Sandbox** means a secured code execution environment of the Appliance that may be optionally created by Ordering Activity to meet its specific/unique system/environmental requirements. Each Custom Sandbox requires various Microsoft Components that must be licensed, purchased, installed, and configured by Ordering Activity (and NOT Trend Micro) for Paid Use in order for Custom Sandboxing to be created, deployed, and utilized by Ordering Activity in its environment – in other words, Trend Micro does NOT sell the Appliance with Microsoft Components. Each Appliance has a fixed number of Custom Sandboxes that may be created by Ordering Activity as may be advised by Trend Micro.

- **Deep Discovery Appliance** or **Appliance** as used herein these Appliance Differing Terms, only means Trend Micro’s Deep Discovery family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version of the Integrated Software. Each Appliance is composed of Hardware, Device Code, Integrated Code, and at the Ordering Activity’s option, Microsoft Components. When acquired by the Ordering Activity for any use other than Test Use, the Hardware portion of the Appliance is sold; the Device Code portion is licensed by the Hardware manufacturer; the Integrated Software portion is licensed in accordance herewith by Trend Micro; and the Microsoft Components must be licensed and purchased by Ordering Activity from Microsoft and/or its resellers based on the needs and uses contemplated by Ordering Activity.

- **Dell** means Dell Marketing L.P., or an affiliate.

- **Device Code** means any operating system, microcode, firmware, utilities and routines, and other sets of object code instructions that are installed on and bundled with the Hardware by Dell. Device Code forms a necessary part of such Hardware and provides, among other things, the necessary instructions for how the Hardware operates and communicates with other Computers. Device Code does not form part of Integrated Software and is not licensed hereunder by Trend Micro to Ordering Activity.

- **Hardware** means the Dell-manufactured device (unless another manufacturer of similar capabilities has been notified to Ordering Activity that forms a part of the Appliance.
"Integrated Software" means the object code version (only) of the Trend Micro-published Deep Discovery applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance being provided hereunder when acquired by Ordering Activity. The Integrated Software is licensed to Ordering Activity for the purpose of testing the Hardware (hereafter referred to as "Test Use") for a period of no more than thirty (30) days (unless Ordering Activity is permitted to receive a Test of an Appliance, Trend Micro grants Ordering Activity for such Test a no charge, a non-exclusive, non-transferable, non-assignable, revocable, Test Use license (only) to the Integrated Software). Ordering Activity's use of the Integrated Software shall be for purposes when the Appliance is inoperative/unavailable; (ii) install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.

"License Termination Event" means the occurrence of an event or circumstance by which the license for Integrated Software granted to Ordering Activity under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software (and/or any Trend Micro-provided Microsoft Component in the case of a Test) is uninstalled from the Appliance; (2) the Appliance, Integrated Software, or Microsoft Component (in the case of any Trend Micro-provided Microsoft Component in connection with a Test) is used for any purpose other than as permitted in the Documentation or the Agreement; (3) any additional/different software is installed on an Appliance other than as specifically permitted by the Documentation with respect to Custom Sandboxing; (4) the Hardware is retired, removed from service, or Repurposed; (5) the Hardware portion of the Appliance is repaired, modified, or the internal works are otherwise accessed by Ordering Activity without permission of Trend Micro or Dell; (6) the Test Period expires if applicable; or (7) either Party provides notice of termination of a Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the termination of the Parties' rights under Section 7 of the Agreement. "Microsoft Components" means various virtualized versions of Microsoft Windows and of Microsoft Office that must be installed and configured on the Appliance in order for Custom Sandboxing to be created, deployed, and utilized by the Appliance on the election of Ordering Activity. "Non-Production Environment" means Ordering Activity's use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity's production environment/systems) that does not access or use live production data at any time or for any reason. Notwithstanding the foregoing, at the written request of Ordering Activity, Trend Micro may grant Ordering Activity the right to use a COPY of live production data to conduct the Test in a Non-Production Environment only on the condition that Ordering Activity first agrees (in a separate written agreement with Trend Micro) that all copies of the live production data so used will be irretrievably destroyed by Ordering Activity after the Testing is complete and will in no event or circumstance be incorporated by any person back into the live production data or production environment/systems of, or otherwise used in any remediation efforts by, Ordering Activity. "Paid Use" means any access, deployment, or use of an Appliance/Integrated Software by Ordering Activity that: (1) has been purchased by Ordering Activity pursuant to the Agreement; and/or (2) Ordering Activity in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment. "Repurpose" means for purposes of these Appliance Differing Terms: (1) Ordering Activity configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Ordering Activity installing additional/different software that is not in accordance with and specifically permitted by the Documentation with respect to Custom Sandboxing.

3. Test License; Test Use. For the avoidance of doubt, Integrated Software accessed by Ordering Activity for a Test is Test Software under Section 7.1 of the Agreement.

3.1 Test Use – Appliance. In instances that the Agreement authorizes Ordering Activity to Test an Appliance, Trend Micro will supply the Appliance without charge to Ordering Activity for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may ONLY be deployed and used by Ordering Activity on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Ordering Activity performing a Test for no more than thirty (30) days (unless Ordering Activity is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Ordering Activity (the "Test Period").

3.2 Test Use – Integrated Software. If Ordering Activity is permitted to receive a Test of an Appliance, Trend Micro grants Ordering Activity for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Ordering Activity by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

3.3 Test Use – Microsoft Components. If Ordering Activity may optionally be used by Ordering Activity in accordance with the Documentation. Trend Micro does not license in any circumstance, and Integrated Software does not include, any Microsoft Components that may be installed on the Appliance by Ordering Activity to create Custom Sandboxing or any other third party software that may be licensed to Ordering Activity that may be installed/deployed (in accordance with the Documentation) on Custom Sandboxes to enhance the capabilities of the Appliance. The license granted in these Appliance Differing Terms to Integrated Software does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will NOT (or permit third parties to): (1) make/create a copy of the Integrated Software or reconfigure, repackage, or reassemble the Integrated Software, without limitations, if the only purpose when the Appliance is inoperative/unavailable; (i) install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (ii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.

3.4 Test Use – Hardware Loan. Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested for Trend Micro, the Ordering Activity will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Ordering Activity agrees that it will not (and

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will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may be specifically agreed in a subsequent writing by Trend Micro, Ordering Activity agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal workings of any Hardware supplied hereunder, it being understood that any such action will be the sole right of Trend Micro or its designee.

3.5 Hardware Usage. With respect to the Test of an Appliance, Ordering Activity shall at all times keep the Appliance and any power cords, sockets or accessories (the "Accessories") supplied by Trend Micro with the Appliance and, further, Ordering Activity agrees to protect the Appliance and Accessories from loss or physical damage. Ordering Activity shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories and Ordering Activity agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Ordering Activity's custody unless such damage resulted from actions of Trend Micro, its employees, or agents.

3.6 Test Use Warranty/Representation Disclaimer. TREND MICRO MAKES NO PROMISES, REPRESENTATIONS, WARRANTIES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO ORDERING ACTIVITY HEREBUNDER "AS IS, WITH ALL FAULTS." FURTHER, TREND MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO: THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET ORDERING ACTIVITY'S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. ORDERING ACTIVITY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO'S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS ARISING FROM OR IN CONNECTION WITH THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGREEEGATE FOR ALL CLAIMS AND CAUSES OF ACTION, TO THE SUM OF FIVE HUNDRED DOLLARS (USD$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.

3.7 Test Use License - Termination. Ordering Activity’s possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

3.7.1 Integrated Software and Other Software – Test Use. On termination of any Test, Ordering Activity covenants and agrees that it will immediately uninstall and irrevocably destroy (without retention of any copies thereof of any kind) the Integrated Software and Microsoft Components, if any. Ordering Activity agrees that it will provide to Trend Micro, if requested, an unqualified certification of irrevocable destruction of the Integrated Software and Microsoft Components, if any, in accordance with the Agreement. For the avoidance of doubt, the foregoing obligation of destruction of the Integrated Software and Microsoft Components on the occurrence of a Termination Event shall apply even if Ordering Activity decides to purchase the Appliance used for Test Use.

3.7.2 Hardware Return. Unless Ordering Activity elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Ordering Activity shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

3.7.3 Purchase of Unit of Appliance Tested. Ordering Activity understands and agrees that if, after the completion of a Test or otherwise, the Ordering Activity decides to acquire/purchase for Paid Use the unit of Appliance that is being used for a Test Use by Ordering Activity, Ordering Activity agrees that it will uninstall the Integrated Software and all Microsoft Components and enter into the Agreement anew by issuance of its Order with respect to such Paid Use before the Integrated Software can be reinstalled in the Appliance. After acceptance of Ordering Activity's Order by Trend Micro by issuance of a License Certificate, Microsoft Components may only be installed on the Appliance by Ordering Activity after it has separately licensed and purchased the appropriate Microsoft Components from Microsoft and/or its resellers since Trend Micro has no ability or right to sell/license/provide any Microsoft Components to Ordering Activity (or any other person) in connection with a Paid Use of an Appliance.

3.8 Acknowledgement. The Appliance and/or Integrated Software or any component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

3.9 Registration and Information Collection. As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Ordering Activity may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or Ordering Activity name as well identity/contact information of Ordering Activity's systems administrators/technical staff. Ordering Activity consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.

3.10 Benchmarking. Ordering Activity may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Ordering Activity; provided, however, as a condition of Trend Micro granting the foregoing permission, Ordering Activity agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

4. Paid Use License Appliance and Integrated Software. This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

4.1 For Integrated Software. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software licensed for Paid Use. Trend Micro grants to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Ordering Activity accepts, a non-exclusive, non-transferable, non-assignable/non-assignable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by
Ordering Activity solely on the unit of Appliance originally shipped to Ordering Activity by or through Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Ordering Activity’s option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. For clarity, Maintenance of the Integrated Software is included in the price of the Appliance for the first year, but renewal Maintenance must be purchased by Ordering Activity each year thereafter in order to continue to receive such Maintenance unless Ordering Activity has purchased a Subscription Period license to such Integrated Software as evidenced on the License Certificate for a period of two (2) years or less, in which event Maintenance is included for the duration of the Subscription Period. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period. Trend Micro agrees that it will continue performance under the Agreement during the pendency of any claim for breach of contract that Trend Micro may have against Ordering Activity.

4.2 Documentation. Ordering Activity is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Ordering Activity has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary rights notices which appear on the original material provided to Ordering Activity by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

4.3 Custom Sandboxing. Ordering Activity understands and agrees that while the Integrated Software/Deep Discovery Appliance gives Ordering Activity the option to create Custom Sandboxes that meet Ordering Activity’s specific system requirements, the Integrated Software when shipped to Ordering Activity as part of the Appliance does NOT include ANY licensed Microsoft Components that are licensed to Ordering Activity by Trend Micro under the Agreement

4.4 Additional License Rights/Limitations. The license granted in this Section 4 does not grant Ordering Activity the right to, and Ordering Activity agrees that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) to the contrary, make/create a copy of the Integrated Software for backup or failover purposes for use when the Deep Discovery Appliance is inoperative/unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.

4.5 Maintenance of Integrated Software. When licensed by Ordering Activity for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

5. Additional Hardware Specific Terms.

5.1 No Trend Micro Hardware Warranty. Notwithstanding anything to the contrary in the Agreement, since the Hardware is manufactured and warranted by Dell and Trend Micro is only acting as a OEM reseller thereof, Trend Micro makes no representation, warranty, or guarantee of any kind or nature with respect to Hardware (or its Device Code), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR SPECIFIC PURPOSE, TITLE, OR NON-INFRINGEMENT, EACH OF WHICH IS SPECIFICALLY DISCLAIMED BY TREND MICRO. IN ADDITION, THE PARTIES AGREE THAT SECTION 13 OF THE AGREEMENT (INTELLECTUAL PROPERTY INDEMNITY) DOES NOT APPLY TO HARDWARE (OR ITS DEVICE CODE).

5.2 New Versions. For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available as part of paid Maintenance then-in-effect at the time of release ONLY refers to such that are made available with respect to Integrated Software and DOES NOT refer to a new or improved version or model of the Appliance or Hardware component.

5.3 Repurpose of the Hardware – Paid Use. Notwithstanding anything to the contrary in these Appliance Differing Terms, since Ordering Activity is the owner of the Hardware purchased for Paid Use, Ordering Activity may determine to Repurpose the Hardware component of any unit of Appliance purchased by Ordering Activity at any time by giving Trend Micro written notice of Ordering Activity’s intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Ordering Activity, such action is a License Termination Event with respect to the Integrated Software and the license therfor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstalled in the original Hardware or transferred to any other device.
5.4 Paid Use Title; Hardware Ownership; Assignment. Title and risk of loss for the Hardware component of an Appliance that is sold to Ordering Activity for Paid Use is transferred to Ordering Activity at Trend Micro’s (or its manufacturer’s or systems integrator’s) dock when loaded onto the first carrier for delivery to Ordering Activity. For the avoidance of doubt, transfer of title to the Hardware portion of the Appliance is in accordance with the Limited Hardware Warranty and on-site support contract referenced in Section 5.2 above for such Hardware, and if such be necessary, Trend Micro hereby assigns contemporaneously with the transfer of title to the Hardware to Ordering Activity, and Ordering Activity hereby accepts such assignment on an ongoing basis of, the referenced Limited Hardware Warranty and on-site support contracts.

APPLIANCE DIFFERING TERMS FOR THE TIPPINGPOINT FAMILY OF APPLIANCES EXCLUDING THE ADVANCED THREAT PROTECTION (ATP) APPLIANCE

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “Agreement”) that is a TippingPoint Appliance (as defined below), the Parties agree that such Appliance is provided under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into, and form a part of the Agreement with respect to such Appliance and together the referenced documents will solely govern and control the license/sale/use/deployment/maintenance/support of such Appliance and the included Integrated Software. In each instance in which the terms and provisions of these Appliance Differing Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance and the Integrated Software without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Appliance Differing Terms shall reference the respective section, schedule, attachment or exhibit of these Appliance Differing Terms. The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Appliance Differing Terms, shall be the complete statement of the agreement of the Parties with respect to any license, sale, use, or any other right in or to such Appliance (or any component thereof) referenced herein that is made available to Ordering Activity by Trend Micro for Paid Use or Test Use and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and excluded herefrom by agreement of the Parties.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“Hardware” means the Trend Micro-manufactured device (or another manufacturer if used by Trend Micro as a source for TippingPoint hardware) that forms a part of the Appliance.

“Integrated Software” means the object code version (only) of the Trend Micro-published TippingPoint applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance or the Virtual Appliance being provided hereunder when acquired by Ordering Activity. The Integrated Software is subject to the terms and conditions of the Agreement and these Appliance Differing Terms. The term Integrated Software also includes when purchased as part of paid Maintenance: (a) Updates to the Integrated Software; and (2) access to the Trend Micro Smart Protection Network service that may be used by Ordering Activity in accordance with the Documentation. The license granted in these Appliance Differing Terms to Integrated Software does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will NOT (or permit third parties to): (i) make/create a copy of the Integrated Software for any reason, including, without limitation, for backup or failover purposes when the Appliance is inoperative/unavailable; (ii) other than as a Virtual Appliance, install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. As excepted, amended, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.

“License Termination Event” means the occurrence of an event or circumstance by which the license for Integrated Software granted to Ordering Activity under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software is uninstalled from the Appliance; (2) the Appliance or Integrated Software is used for any purpose other than as permitted in the Documentation or the Agreement; (3) the Hardware is retired, removed from service, or Repurposed; (4) the Hardware (or the Appliance) is returned, modified, or the internal works are otherwise reissued by Ordering Activity without permission of Trend Micro; (5) the Test Period expires if applicable; or (6) either Party provides notice of termination of the Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the rights of the Parties to terminate under Section 7 of the Agreement.

“Non-Production Environment” means Ordering Activity’s use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason.

“Paid Use” means any access, deployment, or use of an Appliance/Integrated Software by Ordering Activity that: (1) has been purchased by Ordering Activity pursuant to the Agreement; and/or (2) Ordering Activity in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment.

“Repurpose” means purposes of these Appliance Differing Terms: (1) Ordering Activity configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Ordering Activity installing additional/different software to the Appliance that is not in accordance with and specifically permitted by the Documentation with respect to Custom Sandboxing.

“Speed License” means (only with respect to an Appliance or Virtual Appliance that requires a Speed License in order to activate, execute, and/or use the Integrated Software forming a part of such Product) a Subscription Period entitlement to a Licensed Capacity (at a prescribed level of data throughput and/or for such time as may be stated in the applicable SKU and/or License Certificate) for an Appliance or Virtual Appliance. Ordering Activity understands that a Speed License is not required for all Appliances, but if a Speed License is required (as made known in the Product’s Documentation and/or SKU), a Speed License must be purchased by Ordering Activity and remain active in order to execute and use the Integrated Software or otherwise make any use of the Appliance or Virtual Appliance. When and if a required Speed License is purchased by Ordering Activity, Ordering Activity will receive a registration key/activation code that, when installed by Ordering Activity, activates and causes the Integrated Software to execute and be usable in accordance with its Documentation for the level and extent of entitlement purchased by Ordering Activity. A Speed License is not Software under the Agreement, but rather, is a purchased entitlement to a Licensed Capacity for the Integrated Software and forms an integral part of the license for the Integrated Software to the extent of such entitlement.

“Test Period” shall have the meaning set forth in Section 3.1 below.

“Test Use” or a “Test” means the gratuitous right granted to Ordering Activity on the terms and subject to the conditions hereof, to conduct an evaluation, proof-of-concept, trial, or test of an Appliance and its Integrated Software only in a Non-Production Environment for a Test Period as defined in Section 7.1 of the Agreement.
“TippingPoint Appliance” or “Appliance” as used herein these Appliance Differing Terms, means Trend Micro’s TippingPoint family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version of Integrated Software, but shall not include the Advanced Threat Protection (ATP) appliance, which ATP appliance has separate Appliance Differing Terms from those of other TippingPoint appliances. Each Appliance is composed of Hardware and Integrated Software. When acquired by the Ordering Activity for any use other than Test Use, the Hardware portion of the Appliance is sold and the Integrated Software portion is licensed in accordance herewith by Trend Micro. Each Appliance acquired for Paid Use that is shipped to Ordering Activity includes Hardware and Integrated Software that is installed by Trend Micro prior to delivery of the Appliance to Ordering Activity.

“Virtual Appliance” means for purposes of these Appliance Differing Terms, a version of Integrated Software containing features and functionality of a TippingPoint Appliance, but does not include (and Trend Micro does not provide) any Hardware component thereof, if it being understood and agreed that Ordering Activity must supply and maintain host hardware for such Virtual Appliance in accordance with the Documentation therefor. A Virtual Appliance is governed by the Agreement as Software and by these Appliance Differing Terms as Integrated Software.

3. Test License; Test Use. For the avoidance of doubt, Integrated Software accessed by Ordering Activity for a Test is Test Software under Section 7.1 of the Agreement.

3.1 Test Use – Appliance. In instances that the Agreement authorizes Ordering Activity to Test an Appliance, Trend Micro will supply the Appliance without charge to Ordering Activity for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may ONLY be deployed and used by Ordering Activity on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Ordering Activity performing a Test for no more than thirty (30) days (unless Ordering Activity is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Ordering Activity (the “Test Period”).

3.2 Test Use – Integrated Software. If Ordering Activity is permitted to receive a Test of an Appliance, Trend Micro grants Ordering Activity for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Ordering Activity by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

3.3 Test Use – Hardware Loan. Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested by Trend Micro, the Ordering Activity will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Ordering Activity agrees that it will not (and will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may be specifically agreed in a subsequent writing by Trend Micro, Ordering Activity agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal works of any Hardware supplied hereunder, it being understood that any such action will be the sole right of Trend Micro or its designee.

3.5 Hardware Usage. With respect to the Test of an Appliance, Ordering Activity shall at all times keep the Appliance and any power cords, sockets or accessories (the “Accessories”) supplied by Trend Micro with the Appliance and, further, Ordering Activity agrees to protect the Appliance and Accessories from loss or physical damage. Ordering Activity shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories. Ordering Activity agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Ordering Activity’s custody unless such damage resulted from actions of Trend Micro, its employees, or agents.

3.6 Test Use Warranty/Representation/Disclaimer. TRENDS MICRO MAKES NO PROMISES, REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO ORDERING ACTIVITY HEREUNDER “AS IS, WITH ALL FAULTS” AND FURTHER, TREND MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET ORDERING ACTIVITY’S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. ORDERING ACTIVITY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO’S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGGREGATE TO THE SUM OF FIVE HUNDRED DOLLARS (US$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.

3.7 Test Use License - Termination. Ordering Activity’s possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

3.8 Hardware Return. Unless Ordering Activity elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Ordering Activity shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

3.9 Acknowledgement. The Appliance and/or Integrated Software are a component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

3.10 Registration and Information Collection. As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Ordering Activity may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or Ordering Activity name as well identity/contact information of Ordering Activity’s systems administrators/technical staff. Ordering Activity consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.
3.11 Benchmarking. Ordering Activity may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Ordering Activity; provided, however, as a condition of Trend Micro granting the foregoing permission, Ordering Activity agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

4. Paid Use License Agreement and Integrated Software. This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

4.1 Integrated Software. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software licensed for Paid Use. On the terms and subject to Ordering Activity’s continuous compliance with the conditions set forth in the Agreement and on the condition precedent of Ordering Activity making payment as directed in Section 1.3 of the Agreement, Trend Micro grants to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Ordering Activity accepts, a non-exclusive, non-transferable, non-assignable/non-assignable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to (except as referenced in and limited by Section 4.2 below with respect to Products requiring a Speed License for execution and use) activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by Ordering Activity solely on the unit of Appliance originally shipped to Ordering Activity by or through Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Ordering Activity’s option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period.

4.2 Speed License for Integrated Software. Notwithstanding anything to the contrary in Section 4.1 or these Appliance Differing Terms, where an Appliance or Virtual Appliance requires a Speed License, the license for Integrated Software granted in Section 4.1 to activate, execute, and/or use the Integrated Software is subject to the condition precedent (but the license to inactively deploy is NOT subject to such condition) that Ordering Activity first purchase and keep active a Speed License in order to activate and execute the Integrated Software and use the Product in accordance with its Documentation. The lapse of a purchased Speed License shall be an additional License Termination Event under these Appliance Differing Terms for the Integrated Software or Virtual Appliance for which the Speed License has lapsed and the applicable Product will not thereafter operate unless and until a new Speed License is obtained by the Ordering Activity. For the avoidance of doubt, when an Appliance or Virtual Appliance that requires a Speed License is purchased by Ordering Activity, such Product is inactive and incapable of activation, executing any productive process, operation, or being used by Ordering Activity for any purpose unless (and only for such time as) Ordering Activity purchases and keeps active a Speed License for that Product.

4.3 Documentation. Ordering Activity is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Ordering Activity has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary rights notices which appear on the original material provided to Ordering Activity by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

4.4 Additional License Rights/Limitations. The license granted in this Section 4 does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will not: (1) remove, add, or substitute any third party software to the Appliance; (2) separately sell, lease, rent, license, sublicense or otherwise transfer in whole or in part, the Integrated Software or related Documentation to any third party; (3) notwithstanding anything contained in the Agreement to the contrary, make/create a copy of the Integrated Software for backup or failover purposes for use when the Appliance is inoperative/ unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that except as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.

4.5 Paid Use License Warranty – Integrated Software. For Paid Use licenses of Integrated Software, Trend Micro warrants only to Ordering Activity that for ninety (90) days following Ordering Activity’s first use of a registration key or activation code (whichever comes first) for the Integrated Software ONLY, the Integrated Software will materially conform with the applicable Documentation, as Updated from time to time, including “ReadMe” files and release notes that may be made available therewith. The Parties expressly acknowledge that Ordering Activity’s exclusive remedy for non-conformance with the foregoing warranty and Trend Micro’s sole liability with respect thereto, is set forth in Section 11.1 of the Agreement.

4.6 Maintenance of Integrated Software. When licensed by Ordering Activity for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

5. Additional Hardware Specific Terms.

5.1 Trend Micro Hardware Warranty. TippingPoint Appliances are covered by the TippingPoint Product Limited Warranty located at https://tmc.tippingpoint.com/TMC/ShowDocuments?parentFolderId=gdac8&contentId=hardware_limited_warranty.pdf.

5.2 New Versions. For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available by Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Ordering Activity’s option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period.

5.3 Repurpose of the Hardware – Paid Use. Notwithstanding anything to the contrary in these Appliance Differing Terms, since Ordering Activity is the owner of the Hardware purchased for Paid Use, Ordering Activity may determine to Repurpose the Hardware component of any unit of Appliance purchased by Ordering Activity at any time by giving Trend Micro written notice of Ordering Activity’s intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Ordering Activity, such action is a License Termination Event with respect to the Integrated Software and the license therefor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstall in the original Hardware or transferred to any other device.
5.4 Paid Use Title; Hardware Ownership. Title and risk of loss for the Hardware component of an Appliance that is sold to Ordering Activity for Paid Use is transferred to Ordering Activity at Trend Micro's (or its manufacturer's or systems integrator's) dock when loaded onto the first carrier for shipment to Ordering Activity.

EXHIBIT B - MAINTENANCE OF TREND MICRO-BRANDED SOFTWARE
LICENSED UNDER THE TREND MICRO BUSINESS SOFTWARE AND APPLIANCE AGREEMENT
EFFECTIVE 1 MAY 2017
(herein these "Maintenance Terms")

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring paid Maintenance (as defined below) of Software licensed from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the "Agreement"), the Parties agree that such Maintenance is provided under the Agreement and these Maintenance Terms which are ancillary to, incorporated into, and forms a part of the Agreement with respect to paid Maintenance for such Software and together the referenced documents will solely govern and control the Maintenance of such Software. In each instance in which the terms and provisions of these Maintenance Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to Maintenance of the Software, without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Maintenance Terms shall reference the respective section, schedule, attachment or exhibit of these Maintenance Terms. The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Maintenance Terms, shall be the complete statement of the agreement of the Parties with respect to any paid Maintenance made available to Ordering Activity by Trend Micro and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and Void.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Software. Any capitalized term used in these Maintenance Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

- Authorized Contact means one or more individuals appointed by Ordering Activity (consistent with Trend Micro's Support Guide or other published policies) to act as contacts for requesting and receiving Maintenance, which Authorized Contacts will be resident in the country where Ordering Activity is resident unless otherwise notified to Trend Micro by Ordering Activity and approved by Trend Micro.
- Escalated Issue means with respect to code-level errors/bugs in licensed Software, a request from Ordering Activity for Maintenance under Section 3.2.1(b) of these Maintenance Terms and the Support Guide resulting from Ordering Activity suspecting or asserting in accordance herewith, that such licensed Software no longer performs in accordance with its Documentation in any material respect. Escalated Issues may only be created by Ordering Activity as directed in the Support Guide.
- Maintenance is defined in Section 3.2 of these Maintenance Terms and includes the Support Guide as well as other Trend Micro Maintenance/support policies published from time-to-time by Trend Micro or otherwise made available to Ordering Activity.
- Separate Modules means any plug-in, module, or other option for Software that Trend Micro determines to be new or different product/features/functionality that Trend Micro makes generally available to the public by license for new or additional consideration.
- Software means for purposes of these Maintenance Terms, Standalone Software and Integrated Software, but the term does not include Device Code (except that certain virtual appliances licensed by Trend Micro (as identified in its Documentation) DO include an operating system as part of the licensed Software) or Test Software. "Device Code" means any operating system (except for certain virtual appliances as identified in its Documentation, in which event, the Trend Micro-provided operating systems is bundled with and forms a part of the Software), microcode, firmware, utilities and routines, and other sets of object code instructions that are installed on and bundled with any hardware that may be provided to Ordering Activity as part of an Appliance.
- Support Guide means Trend Micro's then-current Global Technical Support Guide for Business Customers posted from time-to-time at https://success.trendmicro.com/support-policies. The Support Guide sets out policies and procedures for Trend Micro's provision of Maintenance to its customers throughout the world other than customers located in the following countries: Japan, the People's Republic of China, Taiwan, the Republic of Korea, Hong Kong SAR, and Macau SAR. As may be made known by Trend Micro locally, such other excluded-region customers may be entitled to support from local or remote Trend Micro resources.
- Updates means and includes and when generally made available by Trend Micro with respect to Software licensed hereunder that is also then-subject to paid Maintenance, new object code versions (including patches and workarounds) of such Software that includes: (a) improvement of features/functionality that is used to identify, detect, and block computer viruses, spam, spyware, malicious code, ransomware, websites, or other forms of computer abuse (both known and unknown) generally categorized as malware and other forms of content identification or categorization; (b) corrections, modifications, redefinitions, patches, workarounds, new definition files, maintenance updates, bug fixes and/or other enhancements to, or for use in connection with, the Software; and/or (c) major or minor new versions of existing Software that contains new features, improvements to existing features, capabilities, structures, and/or functionality that Trend Micro makes available to existing customers that have then-purchased Maintenance for such Software; provided, however, the term “Updates” specifically excludes Separate Modules and does not apply to the Hardware component of any Appliance including its Device Code. Updates that are released by Trend Micro from time to time replace or patch and will become part of previously licensed copies of the updated Software and will not increase the units/Licensed Capacity of Software licensed hereunder, or otherwise create additional copies or licenses of such Software, nor does any Update create any new or additional warranty for the Software it updates.

3.1 Maintenance Overview. Only when purchased by Ordering Activity, Maintenance will be provided to Ordering Activity on the terms and subject to the conditions of these Maintenance Terms and the Agreement as follows: (a) for Standalone Software licensed for a paid Subscription Period; (b) for Standalone Software licensed for a Perpetual Period: (i) for one (1) year only from the date Ordering Activity first receives the Standalone Software registration key(s), activation code(s), the Standalone Software serial number(s) or License Certificate, whichever is earlier, for newly-licensed Standalone Software, (ii) for one or more additional one (1) year periods if Maintenance is repurchased by Ordering Activity; and (c) for the first twelve (12) months from the Delivery Date for Integrated Software licensed as part of an Appliance unless otherwise stated in applicable Appliance Differing Terms. On the terms and subject to the conditions of the Maintenance Terms then-in-effect, Ordering Activity may purchase additional Maintenance for twelve (12) month periods for its Licensed Capacity for Software referenced in subparts (2) and (3) above, otherwise, Maintenance will lapse at the end of the paid twelve month period.

3.2 Maintenance; Maintenance Exclusions.

3.2.1 Maintenance. When purchased by Ordering Activity, Ordering Activity shall have the right to receive and Trend Micro shall provide the following to Ordering Activity's Authorized Contacts on the terms and subject to the conditions set forth in these Maintenance Terms, the following
English-language services (collectively, together with the Support Guide and other policies, procedures, and objectives made commercially-available available by Trend Micro, “Maintenance”): 

(a) Trend Micro will make available to Ordering Activity for downloading from Trend Micro's website advised to Ordering Activity from time-to-time, Updates for then-licensed Software released during each paid Maintenance period.

(b) Trend Micro will accept requests from Ordering Activity's Authorized Contacts via telephone or electronic submission in English on Trend Micro business days (except as noted below), to Trend Micro's support personnel located within the United States only, with respect to: (1) routine, short duration initial Software installation and usage (how-to) questions, but it shall remain Ordering Activity's sole responsibility to install, configure, and deploy all Software; and (2) with respect to an Escalated Issue, troubleshooting code-level errors/bugs in licensed Software (that is to say, Software does not substantially conform to it Documentation) that Ordering Activity is unable to bring to resolution on its own.

(c) Trend Micro will provide Ordering Activity's Authorized Contacts with reasonable access to Trend Micro's antivirus researchers via an established technical support channel set forth in the Support Guide to assist Ordering Activity in addressing malware/virus infections, but in no event will Trend Micro provide any remediation services with respect thereto unless by separate agreement.

(d) The Ordering Activity shall have the right to optionally enable, access, and use Trend Micro's Smart Protection Network (“SPN”) to the extent such features form a part of a licensed Software.

(e) All Maintenance will be conducted by the Parties only in the English language (unless otherwise agreed) and provided by Trend Micro and/or its global Affiliates and subcontractors to locations Trend Micro and/or its global Affiliates may determine from time-to-time, which may be a location solely outside the country or region of Trend Micro’s Licensing Entity. Maintenance may be available in other languages on different terms and conditions and at an additional charge. Ordering Activity understands that in some regions, Maintenance of Products will only be provided by Trend Micro's subcontractors.

(f) Maintenance does not include any Separate Modules, Premium Support Services, or other Trend technical or engineering services.

3.2.2 Escalated Issues. In connection with Trend Micro’s performance of its Maintenance obligations with respect to an Escalated Issue, Ordering Activity agrees to perform, and Trend Micro’s responsibilities and obligations to perform Maintenance with respect to Escalated Issues are subject to, Ordering Activity doing the following:

(a) Escalated Issue. Each licensed Software is being used only in accordance with its Documentation.

(b) Prior to escalating a suspected issue to Trend Micro, Ordering Activity will undertake the identification of and/or isolation of suspected issue(s) with licensed Software such as recreation, diagnosis, and resolution of problems related to licensed Software, and if Ordering Activity is unable to do so, Ordering Activity will develop, diagnose, identify (including gathering all necessary or relevant information, logs, and/or technical information), and create repeatable demonstrations of any purported Software non-conformance, issues or errors for submission to Trend Micro for Maintenance.

(c) After escalation of an issue, allow Trend Micro to have remote access to Ordering Activity's networks/systems to troubleshoot an Escalated Issue if requested by Trend Micro to the extent consistent with Ordering Activity security policies. Ordering Activity and Trend Micro will agree on appropriate security measures to prevent unauthorized access to Ordering Activity’s networks/systems/data for which there is no need-to-know.

3.2.3 Maintenance Exclusions. Maintenance does not include and Ordering Activity will perform, among other things, as Ordering Activity deems necessary or appropriate (or cause to be performed by Contractors): (a) the installation, activation, configuration, deployment, implementation, Updating, and operational training for licensed Software, including gaining access to and utilizing all features and functionality of such Software; (b) the provision of initial support assessment and distinguish whether or not the issue is licensed Software-related that should become an Escalated Issue; (c) simulating and attempting to recreate Escalated Issues and performing any required interoperability tests between Software and any Ordering Activity network/system/component and (d) facilitation and collection of samples and escalation of malware and virus-specific Escalated Issues.

3.3 Authorized Contacts. Trend Micro will provide Maintenance to Ordering Activity only through Ordering Activity's Authorized Contacts. Authorized Contacts, each of whom must be technically skilled and knowledgeable about the Software and the Ordering Activity’s networks, systems, and environment in order to help resolve system issues and to assist Trend Micro in analyzing and resolving Escalated Issues. The Support Guide states the number of Authorized Contacts that Ordering Activity has the right to charge. Ordering Activity is entitled to register with Trend Micro and the registration process. If Ordering Activity needs to designate additional technical personnel as Authorized Contacts, Trend Micro may permit Ordering Activity to do so, but Trend Micro reserves the right to charge Ordering Activity applicable fees. Authorized Contacts will be responsible for, among other things: (i) developing and deploying troubleshooting processes within Ordering Activity and its Affiliates accessing/using any Software licensed to Ordering Activity; (ii) performing any and all technical services required of Ordering Activity in connection with any Software other than Maintenance that Trend Micro is obligated to perform hereunder; and (iii) performing the technical services required of Ordering Activity prior to Ordering Activity’s request for assistance with any Escalated Issue so as not to impair or impede Trend Micro's ability to perform Maintenance of any Software in accordance herewith. An Authorized Contact may not share his or her login, ID, or other credentials with anyone else, nor delegate his or her responsibilities as an Authorized Contact to anyone other than another Authorized Contact. Ordering Activity may update this contact information through Trend Micro's designated online case management system referenced in the Support Guide. Ordering Activity agrees that Trend Micro may store, disclose internally, and use the business contact information of Ordering Activity's Authorized Contacts and other employees and Contractors in connection with the provision of Maintenance by Trend Micro and its Affiliates. Where required by Applicable Law, by providing any such business contact information to Trend Micro, Trend Micro represents to Trend Micro on an ongoing basis that Ordering Activity will have already notified and obtained the consent of the individuals whose business contact information may be stored, disclosed internally, and processed and will forward their requests, if any, to Trend Micro where required by Applicable Law to access, update, correct or delete their contact information to Trend Micro that will then comply with such request.
3.4 Lapse and Reinstatement. In the event that Ordering Activity allows Maintenance to lapse or expire for more than one hundred and twenty (120) days, Ordering Activity shall have no right to purchase and Trend Micro shall have no obligation to permit Ordering Activity to reinstate or otherwise purchase, Maintenance. Trend Micro advises and Ordering Activity acknowledges that because of the constantly changing threat/security environment and periodic technology improvements to most Software, the technical and/or security capabilities, functionality, and performance of any such Software will rapidly degrade and will, in most instances, not perform in the manner and for the purposes for which it is designed or as set forth in the Documentation if annual Maintenance is not repurchased or is otherwise allowed to lapse and such Software is thereafter utilized by Ordering Activity.

3.5 End-of-Maintenance. Trend Micro reserves the right to discontinue Maintenance of any licensed Software (including Software licensed for a Perpetual Period) in accordance with this Section (each of the following herein an “End-of-Maintenance” event). In each of the following End-of-Maintenance events:

(a) Trend Micro will continue to make Maintenance available for any licensed Software that is no longer offered for sale by Trend Micro for a period of at least twelve (12) months after the end-of-sale.
(b) Trend Micro provides Maintenance and other technical support for a then-current Update of licensed Software for at least eighteen (18) months after the release of a subsequent Update for such Software.

Trend Micro advises that it will not renew Maintenance for a period that would otherwise extend past the expiration of an End-of-Maintenance period referenced in subpart (a) above. The Parties understand and agree that an End-of-Maintenance event with respect to any licensed Software shall not be considered a breach hereof by Trend Micro, nor shall any such End-of-Maintenance entitle Ordering Activity to any claim for compensation or damages as result of or in connection therewith.

4. Limited Maintenance Warranty; Non-Conformance Remedy.

4.1 Limited Maintenance Warranty. When purchased by Ordering Activity, Trend Micro warrants to Ordering Activity ONLY that Maintenance will be provided or performed using reasonable care and skill on the terms and subject to the conditions of these Maintenance Terms. Trend Micro will have no obligation to provide Maintenance with respect to any licensed Software, and the foregoing Maintenance warranty will be voided by: alteration, modification, enhancement, or misapplication of the licensed Software; failure to properly install and/or configure the licensed Software; use of the licensed Software other than in accordance with its Documentation; failure to install/deploy the most current Update if such Update would resolve the Escalated Issue; improper maintenance of the Software by any person other than Trend Micro; use of the licensed Software in an unsuitable physical or operating environment; or an Escalated Issue is caused in whole or in part by a product or technology that Trend Micro did not supply.

4.2 Non-Conformance Remedy. For breach of the foregoing warranty, Ordering Activity’s sole and exclusive remedy, and Trend Micro’s entire obligation and liability shall be the re-performance of the non-conforming Maintenance. However, only with respect to separately purchased (by unique SKU) and invoiced Maintenance, if Trend Micro is unable to re-perform Maintenance for any reason to achieve conformance with the warranty after making commercially reasonable efforts, either Ordering Activity or Trend Micro may terminate these Maintenance Terms for convenience as to the non-conforming portion of such Maintenance, in which event, Trend will refund to Ordering Activity a pro-rated amount corresponding to the remaining portion of any paid Maintenance. TREND MICRO SHALL ONLY HAVE LIABILITY FOR ANY SUCH BREACH OF WARRANTY IF ORDERING ACTIVITY PROVIDES TIMELY NOTICE (IN ACCORDANCE WITH THE SUPPORT GUIDE) OF THE BREACH TO TREND MICRO WITHIN TEN (10) DAYS OF THE PERFORMANCE OF THE APPLICABLE MAINTENANCE SERVICE. THE FOREGOING WARRANTY IS ORDERING ACTIVITY’S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES, GUARANTEES, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED, TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT OR GUARANTEE THAT MAINTENANCE WILL BE FREE FROM ERRORS OR DEFECTS, BE UNINTERRUPTED, THAT MAINTENANCE WILL PROTECT AGAINST ALL POSSIBLE THREATS, OR THAT TREND MICRO WILL CORRECT ALL DEFECTS IN MAINTANCE OR SOFTWARE. IN ADDITION TO THE FOREGOING, IT IS EXPRESSLY AGREED THAT THE TERMS, CONDITIONS, LIMITATIONS, AND EXCLUSIONS SET FORTH IN SECTION 12 OF THE AGREEMENT WILL APPLY TO THESE MAINTENANCE TERMS AND MAINTENANCE.

EXHIBIT C – Privacy Notice for Trend Micro Products and Services (Effective January 2017)

Trend Micro Incorporated, 225 East John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA (“Trend Micro” or “we”) provides this Privacy Notice to help Ordering Activity understand the types of information that Ordering Activity provide to Trend Micro, what we do with that information and how we protect that information when Ordering Activity use Trend Micro’s products and services.

With Trend Micro products and services, Ordering Activity can increase the protection for Ordering Activity’s digital data from hackers, spammers, spyware, malware and other online threats. Because of the fast and constant evolving nature of online threats and malware, it is necessary to configure our products and services to constantly provide data and information from Ordering Activity’s devices to enable us to stay ahead of malicious activities and protect Ordering Activity’s devices and data.

What information do Ordering Activity provide?

Product license data
When Ordering Activity install and activate our products, Ordering Activity provide information such as:
name
phone number
e-mail address
device ID
operating system
license key

We use this information to ensure that Ordering Activity license to our solutions is valid and to contact Ordering Activity regarding renewals, technical issues and new product information.

Smart Feedback data
Ordering Activity provides the following types of information and data if Ordering Activity enables certain features such as Smart Feedback, a key feature of our Smart Protection Network (SPN). Providing these types of information and data enables Ordering Activity to participate, share and leverage Trend Micro’s global database of threat related intelligence to rapidly identify and defend against potential threats within Ordering Activity’s unique network environment, as described in more detail below.

Product information
Public IP address
Mobile/PC environment
Metadata from suspicious executable files
URLs, Domains and IP addresses of websites visited
Metadata of client/device managed by gateway product
Application behaviors
Information from suspicious e-mail, including sender and receiver email address, and attachments
Detected malicious file information
Detected malicious network connection information

How does Trend Micro use the data that Ordering Activity provide to us?

Trend Micro uses Smart Feedback collected data to understand threat behavior and reveal trends that lead to stronger security solutions.

- Faster responses to threats: SPN delivers our latest protection to Ordering Activity in real time. Compared to traditional signature updates, this approach dramatically reduces Ordering Activity’s window of vulnerability from (potentially) days to mere minutes.
- Strong defense against targeted attacks: Attackers have moved away from launching large scale attacks to focus on more specific and “personal” targets. Smart Feedback allows us to identify new sources and methods of attack.
- Hidden threats revealed: Using data collected from around the globe, Trend Micro uses big data analytics to identify critical relationships during an attack and shed light on well-hidden threats. This data also helps Trend Micro find zero-day vulnerabilities to deliver updated protection much more rapidly.
- Improved results: The real-time statistics collected by SPN improve the overall quality and performance of Trend Micro solutions

How do we protect Ordering Activity’s information?

Trend Micro designs SPN to limit the collection of personal information as much as reasonably possible, by collecting data that cannot identify an individual where this is sufficient, stripping out specific personal information and keeping only redacted behavior profiles. Unavoidably, Ordering Activity’s computer will also send some information to SPN that can be connected to Ordering Activity, e.g. location information for mobile devices, or file names bearing identifiable details. But, even if and where information can theoretically be connected to an individual person, we do not normally try to make such connection for data reported by Ordering Activity and other users to SPN.

Beyond data aggregation and redaction, SPN also takes additional measures to keep data secure. SPN transfers data using SSL encryption in addition to destination server authentication. We also deploy other technical, administrative and organizational measures to protect the security of personal data, including access controls, premise security measures, secure data destruction and incident response plans.

Where do we process Ordering Activity’s SPN data?

We process SPN data at data centers in the United States. When Ordering Activity connect to our services, Ordering Activity may be sending Ordering Activity’s information outside Ordering Activity’s country.

SPN Data retention and deletion

Trend Micro retains Smart Feedback data only as needed for examining and updating the Smart Protection Network and other legitimate business purposes. Trend Micro regularly deletes Smart Feedback data every 6 months.

How do we share Ordering Activity’s data?

We do not share data that Ordering Activity provide to us, except with service providers that help us perform and improve services for Ordering Activity; with Ordering Activity’s consent; as necessary to perform our contractual obligations to Ordering Activity; in order to protect Ordering Activity’s, our and others’ rights and interests; in connection with a sale or reorganization of our business, if and to the extent permissible by law and as required to cooperate with any legal process and any law enforcement or other government inquiry. This means that we may provide information that we collect from Ordering Activity if that information is relevant to a court subpoena or to a law enforcement or other government investigation, provided this is permissible under applicable data protection law.

If Ordering Activity has any questions, requests, comments or concerns regarding this Privacy Policy, please email us at legal_notice@trendmicro.com or by sending a letter to Trend Micro Privacy Program, Trend Micro Incorporated, c/o Legal Department, 225 East John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA.
EXHIBIT B

END USER LICENSE AGREEMENT

This End-user License Agreement (the "Agreement") is made and entered into as of the date set forth in the Purchase Order, Statement of Work, or similar document (the “Effective Date”) between the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (hereinafter "Customer" or "Ordering Activity"), and the GSA Multiple Award Schedule Contractor acting on behalf of Tufin Software North America, Inc., whose main office is located at 2 Oliver Street, Boston, MA, 02109, United States, on behalf of itself, its parent companies and subsidiaries (together "Tufin" or "Tufin Technologies").

1. DEFINITIONS

1.1 "Affiliate" means any partnership, joint venture, corporation or other form of enterprise, that directly or indirectly, controls, is controlled by, or is under common control with a party hereto.

1.2 "Product" - the object code copy of the software provided to Customer subject to this Agreement, together with the associated original digital media and all accompanying manuals and other documentation, and together with all enhancements, upgrades, and extensions thereto that may be provided by Tufin Technologies to Customer from time to time (subject to the provisions of Section 5 below).

1.3 "Licensed Configuration" - to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of firewalls configured per Check Point Management Server, or the license type of the Check Point Provider-1 Customer Management Add-On or the maximum number of Juniper devices, or the maximum number of Cisco devices, or the maximum number of Fortinet devices, or any other hardware or Product specifications, as declared by Customer in its purchase order, and upon which the licensing fee was based.

1.4 "Licensed Server" - the server which enables the Product to operate in accordance with the Licensed Configuration.

1.5 "License Key" - the code provided to Customer by Tufin Technologies, which enables the Product to operate on the Licensed-server for the specified Licensed Configuration.

1.6 "Third Party Product" - any software programs provided by third parties and contained in the Product.

2. END USER RIGHTS AND USE

Subject to Customer's compliance with the terms hereunder, Tufin Technologies grants Customer a non-exclusive, non-transferable, non-sub licensable limited license to use the Product in accordance with the documentation provided by Tufin Technologies only on the Licensed Server and only for the Licensed Configuration (the "License").

3. LIMITATIONS ON END USER RIGHTS

Customer may not copy, distribute, reverse engineer, or make derivative works of the Product except as follows:

3.1 Customer may make only one copy of the Product on magnetic media for archival backup purposes, provided that such Customer’s archival backup copy is not installed or used on any computer without Tufin Technologies' prior written consent. Any other copies Customer makes of the Product are in violation of this Agreement.

3.2 Customer may not use, modify, translate or reproduce the Product, or assign or transfer the right to use the Product or copy the Product except as expressly provided in this Agreement.
3.3 Customer may not resell, sublicense, rent, lease, or lend the Product.

3.4 Customer agrees to use the Product solely for its internal business purposes, and not to let others use the Product and not to use the Product for the benefit of third parties.

3.5 Customer acknowledges that the source code of the Product, and its underlying ideas and/or concepts, are valuable intellectual property of Tufin Technologies and Customer agrees not to attempt to (or permit others to) decipher, reverse engineer, reverse compile, disassemble, or otherwise attempt to discover the source code of the Product or create derivative works based on the Product.

3.6 Customer agrees that Customer shall only use the Product in a manner that complies with all applicable laws in the jurisdiction in which Customer uses the Product, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

3.7 Evaluation License. This Section 3.7 shall only apply if Customer is licensing the Product for an initial evaluation period. In such case and subject to Customer's compliance with the provisions of this Section 3.7, Tufin Technologies grants to Customer a limited in time, a non-exclusive, non-transferable, non-sub licensable license to use the Product in accordance with the relevant documentation provided by Tufin Technologies, only on the Licensed Server and only for the Licensed Configuration (the "Temporary License"). The Temporary License is valid only for the designated evaluation period and is designed to allow Customer to evaluate the Product during such period. In the event that Customer wishes to enter into a full License Agreement with Tufin Technologies, Customer may request a License Key from Tufin Technologies which if provided to Customer will allow Customer to use the Product after such evaluation period, but only subject to all of the terms and conditions of this Agreement. In the event that Customer and/or Tufin Technologies determine not to enter into a licensing transaction with the other party, both during or at the end of such evaluation period, then Customer's rights under this Agreement shall terminate at the end of the evaluation period and Customer shall, at Tufin Technologies' discretion, promptly return to Tufin Technologies or destroy all copies of the Product. It is a violation of this End User License Agreement to create, set-up or design any hardware, software or system which alters machine's date or time during the evaluation period. Sections 3.2 to 3.6 shall apply, *mutatis mutandis*, to any Temporary License.

4. MAINTENANCE AND SUPPORT

4.1 Tufin performs Maintenance and Support services in accordance with Tufin’s standard Software Maintenance Program: http://web.tufin.com/hubfs/Tufin_Maintenance__Support_Services.pdf Tufin may modify its Software Maintenance Program upon written notice to Customer, provided, however, that in no event may Tufin make any modifications to its Software Maintenance Program that would materially reduce the level of maintenance and support services that Tufin provides to Customer hereunder during the then-current term for which Customer has paid maintenance and support fees.

4.2 Tufin will provide Maintenance and Support services on an annual (twelve month) basis, provided that Customer pays Tufin’s then-current annual maintenance and support service fees according to Tufin’s price list and the GSA Schedule Pricelist. Customer will purchase maintenance and support for all licensed Software during the first twelve (12) months from the date of delivery of the Software (“Initial Term”).

4.3 Customer may choose to continue maintenance and support on an annual basis (“Renewal Term”) after the Initial Term. Customer shall notify Tufin at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term of its intent to renew maintenance and support services under this Agreement. Maintenance and support services for the Software shall not automatically renew on annual basis. If Customer elects to purchase maintenance and support, Customer must purchase maintenance and support services with respect to all of the licensed Software. Reinstatement of lapsed maintenance and support services is subject to payment by Customer of Tufin’s reinstatement fees such as amount that would have been paid by the Customer for the past maintenance and support services period(s) had coverage been maintained continuously.

4.4 Exclusions to Maintenance and Support Services. Tufin shall have no obligation of any kind to provide maintenance and support services for problems in the operation or performance of the Software caused by any of the following (each, “Customer-Generated Error”): (a) non-Tufin software or hardware products; or (b) Customer’s failure to properly maintain Customer’s site and equipment on which the Software is installed or accessed. If Tufin determines that it is
necessary to perform maintenance and support services for a problem caused by a Customer-Generated Error, Tufin will notify Customer thereof as soon as Tufin is aware of such Customer-Generated Error and, upon Customer’s approval, Tufin will have the right to perform such services and invoice Customer at Tufin’s then-current published time and materials rates in accordance with the GSA Schedule Pricelist for all such maintenance and support services performed by Tufin.

5. COPYRIGHT

The Product and all rights, without limitation including proprietary rights therein, are owned by Tufin Technologies and/or its licensors and Affiliates and are protected by international treaty provisions and all other applicable national laws of the country in which it is being used. The structure, organization, and code of the Product are the valuable trade secrets and confidential information of Tufin Technologies and/or its licensors and Affiliates. Customer must not copy the Product, except as set forth in clause 3.1 (Limitations on End-User Rights). Any copies which Customer is permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on the Product.

6. COMMENCEMENT & TERMINATION

This Agreement is effective from the first date Customer installs the Product and shall remain in effect until terminated, in accordance with the terms herein. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tufin shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, Customer agrees to cease any and all use of the Product and to return to Tufin Technologies or destroy, at Tufin Technologies' discretion, the Product and all documentation and related materials in Customer’s possession, at Customer’s own costs, and so certify to Tufin Technologies in writing. Except for the License and/or Temporary License granted herein and except as expressly provided herein, the terms of this Agreement shall survive termination.

7. INDEMNIFICATION

Tufin Technologies shall have the right to intervene to defend or settle, at its option, any action at law against Customer resulted directly from a claim that Customer’s permitted use of the Product under this Agreement infringes any patent, copyright, or other ownership rights of a third party (a "Claim"). Notwithstanding the aforementioned, claims associated with any or all of the following are excluded from Tufin Technologies' indemnification obligations: (i) any alterations, modifications, or adaptations to the Products made by anyone other than Tufin Technologies (including – without limitation – Customer); (ii) the use of the Products in combination with products and/or information not provided and/or approved by Tufin Technologies; or (iii) use of any version other than the then current, unaltered version of the Product, where Customer was previously advised not to make any further use of previous versions. Customer agrees to provide Tufin Technologies with written notice of any such Claim within ten (10) days of Customer’s notice thereof and provide reasonable assistance in its defense. Tufin Technologies has sole discretion and control over such defense and all negotiations for a settlement or compromise, unless it declines to defend or settle, in which case Customer is free to pursue any alternative Customer may have, provided that Tufin Technologies shall not be required to indemnify Customer for any settlement reached without Tufin Technologies' prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

8. WARRANTY DISCLAIMER

TUFIN WARRANTS THAT THE PRODUCT WILL, FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PRODUCT WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, CUSTOMER
ACKNOWLEDGES THAT THE PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TUFIN TECHNOLOGIES, ITS LICENSORS AND AFFILIATES, EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE PRODUCT WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. THERE IS NO WARRANTY BY TUFIN TECHNOLOGIES OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE PRODUCT WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK FOR THE SELECTION OF THE PRODUCT TO ACHIEVE CUSTOMER’S INTENDED RESULTS AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM IT.

9. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TUFIN TECHNOLOGIES BE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES, DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, COVER, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT, OR OTHER THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF TUFIN TECHNOLOGIES OR ITS LICENSORS OR AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME COUNTRIES/STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY, BUT MAY ALLOW LIABILITY TO BE LIMITED, IN SUCH CASES, TUFIN TECHNOLOGIES, ITS EMPLOYEES OR LICENSORS OR AFFILIATES’ LIABILITY SHALL BE LIMITED TO THE AMOUNT ORDERING ACTIVITY PAID FOR THE PRODUCT DURING THE LAST TWELVE (12) MONTHS. Nothing contained in this Agreement limits Tufin Technologies' liability to Customer for its indemnification obligations under Section 7 (other than as specified therein), or in the event of death or personal injury resulting from Tufin Technologies' gross negligence. Tufin Technologies is acting on behalf of its employees and licensors or Affiliates for the purpose of disclaiming, excluding, and/or restricting obligations, warranties, and liability as provided in this clause 9, but in no other respects and for no other purpose. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.229-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

10. EXPORT CONTROLS

The Product is subject to various export control laws including, without limitation, the export control laws of the United States. Customer agrees that Customer will not ship, transfer, or export the Product into any country, or make available or use the Product in any manner prohibited by any applicable export control laws.

11. GENERAL

11.1 Taxes. Tufin shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

11.2 Miscellaneous. Except by operation of law, neither party may assign its rights or obligations under this Agreement to any party without the prior written consent of the other party. Both parties shall remain fully responsible to the other party...
for a breach of this Agreement by its assignees. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect.

11.3 Governing Law; Venue. The Federal laws of the United States shall govern all issues arising under or relating to this Agreement. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

11.4 Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire understanding and agreement between Customer and Tufin Technologies and may be amended only in writing signed by both parties.

11.5 Third Party Software. The provisions of this Agreement shall apply to all Third Party product providers and to Third Party products as if they were the Product and Tufin Technologies, respectively.

11.6 Government Restricted Rights. This provision applies to Product acquired directly or indirectly by or on behalf of any government. The Product is a commercial product, licensed in accordance with FAR 12.212 and was developed entirely at private expense and without the use of any governmental funds. Any use modification, reproduction, release, performance, display, or disclosure of the Product by any government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement, and no license to the Product is granted to any government requiring different terms.

11.7 This is the entire agreement between Tufin Technologies and the Customer relating to the Product, and it supersedes any prior representations, discussions, undertakings, end-user agreements, communications, or advertising relating to the Product.

Customer
By: __________________________
Name: __________________________
Title: ___________________________
Date: _________________________

Tufin Software North America, Inc.
By: __________________________
Name: __________________________
Title: ___________________________
Date: _________________________
1. **Scope.** This Rider and the attached Unitrends, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3301 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviations I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer of the cessation of such occurrence.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms...
shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

1) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
UNITRENDS
UNITRENDS SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

Unitrends™ Inc. End User License Agreement

1. Software Use
1.1. License Grant Subject to the terms and conditions of this Agreement, Licensor grants to the Ordering Activity a personal, limited, non-exclusive, non-transferable, license to use the Software for the term set forth in the applicable purchase order accepted by Licensor (either perpetual or for the subscription period selected in the ordering process) in object code form only on such computers, servers, or equipment in which such Software is embedded or for which such Software is approved for use by Licensor in the Documentation and on such storage capacity as specified in the Documentation (collectively “Approved Systems”) solely for Ordering Activity’s own internal information processing services and computing needs and subject to any license limitations specified by Licensor or its Channel Partners as part of the ordering process. Any use of the Software that is inconsistent with the terms and conditions of this Agreement, including without limitation the transfer of the Software to another computer or a third party
shall be in violation of this Agreement. All rights not expressly granted to Ordering Activity are retained by Licensor. Ordering Activity agrees that its use of the Software will comply with all Federal, state and local laws, rules and regulations of the United States and any foreign country in which the Software is used. The license granted herein is subject to the specific terms set out in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Licensor in the Documentation. Ordering Activity shall pay all applicable license fees as set forth in the applicable purchase order for the Software to Licensor or the Channel Partner through which Ordering Activity issued its purchase order for the Software in accordance with the payment terms set forth on the applicable purchase order.

1.2. Third Party Contractors. Notwithstanding anything to the contrary contained herein, Ordering Activity may permit its Third Party Contractors to use the Software on Ordering Activity’s behalf solely in connection with providing information processing and computing services to Ordering Activity. "Third Party Contractor" means any third party engaged by Ordering Activity to provide services to Ordering Activity that is not a competitor of Licensor. Ordering Activity shall require its Affiliates and Third Party Contractors to agree to the terms of this Agreement and shall be liable for any breach of this Agreement by its Affiliates or Third Party Contractors.

1.3. License Keys. In order to use the Software, a license key may be required. After Licensor has received a valid purchase order issued by Ordering Activity which specifies the proper fees and identifies the platform and host name of each computer, server or other equipment on which the Software is installed or will be installed, Licensor will issue a license key to Ordering Activity.

1.4. Restrictions.

(i) General. Except as otherwise expressly permitted herein, Ordering Activity shall not and shall not permit any third party to: (a) translate, adapt, reverse engineer, decompile, decrypt, disassemble, or create derivative works based on the Software; (b) copy (except for one archival copy and provided all of Licensor’s trademark, copyright, patent and other notices of proprietary rights are reproduced on all copies), modify or create derivative works of the Software; (c) rent, lease, transfer, assign, sublicense or otherwise transfer rights to the Software; (d) transfer, distribute, resell, rent, lease, sublicense or loan the Software to any third party; (e) use the Software in a service bureau, or application service provider environment, or in any commercial time share arrangement or otherwise use or make available the Software or any part of the Software for the benefit of any third party; (f) use the Software publicly available at an internet website; (g) use the Software except on the approved Systems on Ordering Activity’s own internal computer networks; (h) attempt to circumvent, disable or defeat any Licensor license key encoded into the Software; (i) use the Software in contravention to any applicable laws or government regulations, including without limitation export laws, and shall not remove the Software or, if applicable, the license keys from the country in which such use was originally licensed; (j) disclose to any third party or publish the results of Software performance benchmarks obtained using the Software; (k) remove any proprietary rights, trademark or copyright notices or other notices contained in the Software. If 1.4.(i)(a) is prohibited by applicable law, Ordering Activity shall provide Licensor with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide Licensor with a right of first refusal to perform such work at rates equal to those proposed by a recognized third party software services provider for such work. Ordering Activity shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software.

(ii) Software Embedded In Approved System. If the Software is delivered as embedded in an Approved System, Ordering Activity agrees not to remove the Software from the Approved System without Licensor’s prior written consent.

(iii) Reserved

(iv) Use Where Invoiced. Ordering Activity’s use of the Software under a paid license is limited to the country where Ordering Activity has been invoiced for the Software under the applicable purchase order.

(v) Prior Versions. If the Software is a version that Ordering Activity has converted or exchanged from a valid licensed prior version (i.e., an Upgrade), Ordering Activity agrees that by using the Upgrade, Ordering Activity will no longer use the prior version. Licensor reserves the right to require the certification of the destruction of such previous version of the Software.

1.5. Third Party Software. The Software may include certain third party open source components that are distributed under their own licensing terms. For more details, see the User Guide document in the Documentation available at the Licensor web site (www.unitrends.com) or accompanying the Software. All terms herein are offered by Licensor and not by the rightsholders of such components, and are without prejudice to the terms thereof. Ordering Activity may obtain the location of a copy of the source code of these components by contacting Licensor.

1.6. Continual Development. This Agreement governs any updates, upgrades, new versions, bug fixes, corrections, improvements, revisions or enhancements to the Software which Licensor may furnish to Ordering Activity pursuant to support services or otherwise (collectively, “Upgrades”) and any additional copies of the Software licensed or provided to Ordering Activity for which Ordering Activity has purchased and, if applicable, holds the corresponding license keys, all of which are deemed included in the definition of “Software.” Ordering Activity acknowledges that the Software may change and that future versions of the Software may be incompatible with prior versions of the Software. Ordering Activity further acknowledges and agrees that Licensor has no obligation to provide any Upgrades or additional copies of the Software under this Agreement. If any Upgrades or additional copies are provided, Ordering Activity does not have a license or right to use any such Upgrades or additional copies unless Ordering Activity, at the time of acquiring such Upgrade or copy already hold a valid license and corresponding license key, if applicable, to the original Software and any use of the Upgrades is limited to Approved Systems for which the original Software was purchased.

1.7. Support Services. Licensor will not provide, and Ordering Activity is not entitled to, any support services under this Agreement. Ordering Activity may procure support services separately and such support service will be subject to the terms and conditions of the underlying GSA Schedule Contract, Schedule pricing, and the applicable purchase order. This Agreement does not give Ordering Activity any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by Licensor at any time in the future. Any of the foregoing updates, upgrades, extensions or enhancements may be available at Licensor’s discretion and Ordering Activity will be notified in the event of their availability.

1.8. APIs. Licensor may provide to Ordering Activity Application Programming Interface (“APIs”) for Ordering Activity’s use solely for the purpose of creating software that communicates with the Software (“Interfaces”). Ordering Activity hereby acknowledge and agree that Ordering Activity will not (1) use the APIs to create, design or develop anything other than Interfaces; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the APIs, except that Ordering Activity may modify and create derivative works of, and distribute any code provided in the APIs that is designated by Licensor in the API’s documentation as “distributable code” solely as part of Interfaces; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of the Software or this Agreement; or (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.
1.9 Additional Terms Applicable to Boomerang. If Ordering Activity has licensed Licensor’s Boomerang Software the following terms apply and shall supersede any conflicting terms in Section 1.1.

1.9.1 License. Licensor grants to the Ordering Activity a limited, non-exclusive, non-transferable license during the subscription period selected by Ordering Activity as part of the ordering process (the “Subscription Period”) to use the Boomerang Software for the “Permitted Purpose” on the terms and conditions of this Agreement and limited to the number of virtual machines selected by Ordering Activity in the ordering process ("VM Quota Entitlement"). Ordering Activity acknowledges and agrees that the Boomerang Software is provided as a virtual OVA appliance only. The license granted in this Agreement is solely for the following “Permitted Purpose”: to replicate, cloudburst, and migrate virtual machines (“VMs”) between Ordering Activity’s VMware environment and AWS Cloud, and perform services for Ordering Activity’s internal business purposes only. If Ordering Activity has issued a purchase order for the “Migration Only” offering, Ordering Activity acknowledges and agrees that the Subscription Period is sixty (60) days and Boomerang may be used on only one virtual machine. Ordering Activity may not use the Boomerang Software except on Ordering Activity’s own VMware environment and Amazon Web Services (“AWS”) cloud.

1.9.2 Reserved.

2. Reserved.

3. Reserved.

4. Ownership

4.1 Software. The Software and APIs are licensed and not sold. Ordering Activity acknowledges and agrees that the Software and APIs are the sole property of Licensor and its suppliers, and has been developed at great expense; therefore, Ordering Activity agrees to protect the Software and APIs from unauthorized disclosure to third parties. As between Licensor and Ordering Activity, all right, title and interest in and to the Software and the APIs, and all enhancements, updates, modifications, new versions, and derivative works thereof, and all intellectual property rights therein and thereto, are solely owned by Licensor and Licensor reserves all rights not expressly granted hereunder.

4.2 Reserved.

4.3 Feedback. Ordering Activity and its users may, from time to time, make known to Licensor suggestions, enhancement requests, techniques, knowledge, comments, feedback or other input to Licensor with respect to the Software (collectively, “Suggestions”). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Licensor shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development (“Improvement”) incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Ordering Activity or any other person or entity. To assist Licensor in its efforts to enhance the features available in the Software in order to improve Ordering Activity’s experience in using the Software, Ordering Activity agrees that Licensor may collect log and usage information from the Software, which may be used by Licensor for its business purposes. Licensor may use any technical information Ordering Activity provides to Licensor for any Licensor business purposes without restriction, including for product support and development. Licensor will not use technical information in a form that personally identifies Ordering Activity.

4.4 Reserved.

5. Reserved.

6. Limited Warranty; Disclaimer

6.1. Reserved.

6.2 Limited Warranty. Subject to the provisions of this Section 6, Licensor warrants only that the Software will conform in all material respects to its published Documentation for a period of sixty (60) days from the earlier of (i) the date Ordering Activity first downloads and is able to use the Software and (ii) the date Licensor or its Channel Partner provides Ordering Activity with the associated license key(s). Ordering Activity’s sole and exclusive remedy for any breach of this warranty is for Licensor or its designated third party service provider to, at Licensor’s option and in its sole discretion, to either (i) repair or replace, without charge, any Software which is not in conformity with the foregoing warranty or (ii) to terminate this Agreement and refund the license fees paid by Ordering Activity for the Software instead of repairing or replacing the Software. This limited warranty extends only to the original Ordering Activity. This warranty is subject to the following conditions: (i) the Software is installed by Licensor or its authorized representatives or installed in accordance with all of Licensor’s installation instructions by personnel trained by Licensor; and (ii) Ordering Activity notifies Licensor within the sixty (60) days warranty period of the breach of warranty. This warranty does not cover (x) any defect or deficiency which is not reproducible or which results from: (1) any alteration, repair or maintenance of the Software by anyone other than Licensor or its authorized contractors; (2) failing to follow in all material respects Licensor’s written recommendations or instructions; (3) use the Software on other than the Approved Systems or third party software, supplies or accessories included with the Software. Such Approved Systems and other third party products are provided with the owner’s or manufacturer’s warranties, if any, which Licensor is permitted to pass on to Ordering Activity. OTHERWISE, SUCH THIRD PARTY PRODUCTS ARE PROVIDED TO ORDERING ACTIVITY “AS IS”.

6.3 DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE, THE TRIAL VERSION OR ANY FREE SOFTWARE WILL BE ERROR-
FREE, SECURE, ACCURATE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT LICENSOR WILL BE ABLE TO CORRECT ALL DEFECTS. THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. LICENSOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. Ordering Activity assumes the risk of any and all liability, damage or loss from use, or inability to use the Software, the Trial Version, and any Free Software. If applicable law requires any warranties other than those set forth in this Section 6, all such warranties are limited in duration to sixty (60) days from the earlier of the date the Software is first made available for download or is delivered.

7. Reserved.

8. Government End Users: This section applies to all acquisitions of the Software by or for the United States Federal Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government’s rights to use, duplicate or disclose the Software are limited to “Restricted Rights” as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Government’s needs or is inconsistent in any respect with Federal law, the Government agrees to return the Software, unused, to Licensor at the address set forth above.
VAREONIS SYSTEMS, INC.
1250 BROADWAY, 29TH FLOOR
NEW YORK, NY 10001

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Varonis Systems, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800:2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in an advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VARONIS SYSTEMS, INC.**

**VARONIS SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

License Agreement

THE TERMS OF THIS LICENSE SUPERSEDE IN THEIR ENTIRETY ANY CONFLICTING TERMS OF ANY LICENSE AGREEMENT WHICH ACCOMPANIES THE SOFTWARE, AS APPLICABLE, BASED ON THE SOFTWARE KEY THE GSA CUSTOMER HAS BEEN ASSIGNED (THE "SOFTWARE").
1. Grant of License. Varonis Systems, Inc. ("Licensor") grants the GSA Customer a limited, non-exclusive, non-transferable, non-sublicensable license to (i) use the Software as provided herein, during the Evaluation Period (as defined below), solely for the trial and evaluation of the Software (a "Temporary License"), and/or (ii) subject to the full payment of the applicable license fee, to use the Software, in executable form only, internally (the "Permanent License") solely during the term set forth in Section 5 below. The GSA Customer may not make any commercial use of the Software, nor grant any third party any right to use the Software, whether or not for any consideration. This License Agreement allows the GSA Customer to run and use the Software on the GSA Customer's internal network, subject to the number of users (i) limited by the software key provided to the GSA Customer by the Licensor, if a Temporary License is granted to the GSA Customer, or (ii) indicated in the GSA Customer Purchase Order pursuant to which a Permanent License is granted to the GSA Customer. For the purpose of this Agreement, with respect to each Software Product a "user" shall include any user that has access or may potentially have access (whether authorized or unauthorized) during the term of the Permanent License to any of the data resources monitored by such Software Product.

2. Other Rights and Limitations. The GSA Customer may not, and may not permit or aid others to, translate, reverse engineer, decompile, disassemble, update, modify, reproduce, duplicate, copy, distribute, place the Software onto a server so that it is accessible by third parties via a public network or otherwise disseminate all or any part of the Software, or extract source code from the object code of the Software. The GSA Customer may not publish or make available to the public, without Licensor's prior written approval, its impressions, evaluations, notes or recommendations from the use of the Temporary License. The Software is licensed as a single product. The GSA Customer may not separate its component parts for use on more than one computer or for any other purpose. The GSA License is granted to the GSA Customer, or (i) indicated in the GSA Customer Purchase Order pursuant to which a Permanent License is granted to the GSA Customer. For the purpose of this Agreement, with respect to each Software Product a "user" shall include any user that has access or may potentially have access (whether authorized or unauthorized) during the term of the Permanent License to any of the data resources monitored by such Software Product.

3. Proprietary Rights; Confidentiality. The GSA Customer acknowledges and agrees that the Software is a proprietary product of Licensor, protected under copyright laws and international treaties. The GSA Customer further acknowledges and agrees that all right, title and interest in and to the Software, including associated intellectual property rights, are and shall remain with Licensor. All intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, etc.) evidenced by or embodied in and/or attached/connected/related to the Software, including any revisions, corrections, modifications, enhancements, updates and/or upgrades thereof (to the extent provided by Licensor) are and shall be owned solely by Licensor. This Agreement does not convey to the GSA Customer any interest in or to the Software, except for a limited right of use as set forth herein, terminable. In accordance with the FAR, the GSA Schedule Contract and/or any applicable GSA Customer Purchase Orders. The GSA Customer will maintain all copies of the Software and all related documentation in confidence, and in a manner that the Software and all related documentation are not publicly accessible, and that only those that need access to Software shall be able to access it. When the end user is an instrumentality of the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

4. License Fees. In consideration of the Permanent License, the GSA Customer shall pay the applicable license fees.

5. Term and Termination. The Temporary License shall be effective upon delivery of the Software, and shall continue until the lapse of thirty (30) days from the delivery day (or such longer period as approved in writing by the Licensor), unless terminated earlier as set forth in the FAR, the underlying GSA Schedule Contract, and/or any applicable GSA Customer Purchase Orders (the "Evaluation Period"). The Permanent License shall be perpetual, unless terminated by Licensor in accordance with the FAR, the underlying GSA Schedule Contract, and/or any applicable GSA Customer Purchase Orders. When the end user is an instrumentality of the U.S. Government, the Permanent License was granted to the GSA Customer by the Licensor does not warrant that the Software shall be error free or that it shall meet the GSA Customer's requirements. This limited warranty is void if failure of the Software has resulted from accident, abuse, unauthorized use or misapplication. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE SOFTWARE MEDIA AND THE SOFTWARE ARE LICENSED "AS IS", AND LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT.

6. Maintenance and Support. Following the Evaluation Period, and in connection with Software granted a Permanent License, the GSA Customer may purchase maintenance and support services pursuant to the execution of a new GSA Customer Purchase Order. The use and installation of any updates, patches or other software the GSA Customer may receive or purchase from Licensor or its resellers in connection with the GSA Customer’s use of the Software, shall also be subject to and governed by the terms of this Agreement and the terms of Licensor’s Support Principles attached hereto as Exhibit A.

8. Limitation of Liability. Notwithstanding anything herein to the contrary, Licensor’s cumulative liability to the GSA Customer or any third party for any loss, cost or damage resulting from any claims, demands, or actions arising out of or relating to this License Agreement, the Temporary License and/or the Permanent License shall not exceed the license fees actually paid to Licensor hereunder, if any. In no event shall Licensor be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Licensor has been advised of the possibility of such damages.

9. Qualifications and Limitations Basis of Bargain. The limited warranty, exclusive remedies and limited liability provisions set forth herein are fundamental elements of this License Agreement and the license granted hereunder, and the GSA Customer accepts and confirms that Licensor would...
not be able to provide the Software on an economic basis without such limitations. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Varonis’ negligence; (2) for fraud; or (3) for express remedies under law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

10. U.S.-Related Special Provisions. The GSA Customer agrees that the Software is not being or will not be shipped, transferred or re-exported, directly or indirectly, into any country prohibited by the United States Export Administration Act and the regulations thereunder, nor will it be used for any purposes prohibited by such Act. If any part of the Software is acquired by or on behalf of a unit or agency of the U.S. Government, the Government agrees that the Software and all related documentation are "commercial computer software" or "commercial computer software documentation' and that, absent a written agreement to the contrary, the Government’s rights with respect to the Software and the related documentation are limited by the terms of this Agreement, pursuant to FAR 12.212(a), FAR 52.227-14 “Rights in Data” (Dec. 2007) and/or DFARS 252.227-7015 “Technical DataCommercial Items” (Jun. 2013), as applicable.

11. Governing Law and Jurisdiction; Litigation Costs. This Agreement shall be construed and governed in accordance with the laws of the United States of America without reference to conflict of laws, and dispute resolution shall take place in a forum, and within the time period, prescribed by applicable federal law. No equitable or injunctive relief, and no shifting of legal fees or costs, may be sought against the GSA Customer except as, and then only to the extent, specifically authorized by applicable federal statute.

12. Auto-updates & Environment Settings survey. The following functionality shall automatically be available to the GSA Customer with the Software: (i) if the GSA Customer purchases software subscription services, and subject to Government Information Security Requirements, including but not limited to those imposed by the Federal Information Security Management Act (FISMA), Licensor will regularly download and install software fixes and improvements to the installed DatAdvantage® environment. This includes only database scripts and does not compromise the data collected at the GSA Customer’s environment. Use of the software fixes and improvements shall be subject to the terms of this Agreement; and (ii) if the GSA Customer purchases support services, subject to Government information security requirements, Licensor will monitor and collect general information about the GSA Customer’s installed Software environment. This includes general information (the number of probes, shadows, file servers, folders, users and permissions that are monitored), as well as health status (database sizes, jobs and status of executables). This information can be used by Licensor's support engineers to improve the service if a problem arises, or to contact the customer proactively to prevent problems. Note that the GSA Customer may choose not to activate these functions by manually selecting "I Refuse" during the installation process.

13. Miscellaneous. Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof. This Agreement, together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders represents the entire agreement concerning the program between the GSA Customer and Licensor and it supersedes any prior proposal, representation, or understanding between the parties. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer’s Purchase Order. The GSA Customer may not assign this Agreement to any third party without the prior written consent of Licensor. Assignment by Varonis is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013). The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

Agreed and Accepted:

Varonis Systems, Inc. The GSA Customer
By: By:
Title: Title:
Date: Date:

Exhibit A

Varonis Support Principles

1. Support Services

1.1. Support Services. Throughout the Support Services term, Varonis will make available to the GSA Customer the following Support Services in respect of the Software (for which the Customer duly purchased a license from Varonis) (collectively "Support Services"):

1.1.1. Software Subscription under Section 2 below;

1.1.2. Error verification and classification under Section 3 below;

1.1.3. Correction of Errors under Section 5 below;

1.1.4. Consultation and advice per telephone and email under Section 6 below:

1.2. Supported Versions. Varonis will provide Support Services under this Agreement only for the most current generally available Version of the Software (the "Most Current Version") and the Version immediately preceding the Most Current Version of the Software (the "Previous Version"). Notwithstanding the aforesaid, for a period of three (3) months as of the release of the Most Current Version of the Software, Varonis will provide support services to the Version of the Software which is immediately preceding the Most Current Version of the Software, in such level determined by Varonis at its sole discretion.

"Version" shall mean a subsequent release of a Software or associated Documentation (the user documentation made generally available by Varonis to customers in connection with the Software) denoted by a change in the Software's release number. "Versions" do not include new functionality, features or modules offered by Varonis as separate or additional products or components or add-ons by Varonis.

1.3. Supported Users. Varonis will provide Support Services under this Agreement with respect to the number of users for which the GSA Customer duly purchased the Support Services. Upon any renewal of the Support Services, the GSA Customer shall be required to renew the Support Services for the higher of (i) the initial number of users indicated in the purchase order pursuant to which the Software was purchased or (ii) the number...
of users indicated in Varonis’ records, if such number is higher than the number in subsection (i), following an increase in the number of users under the license of the Software pursuant to the purchase of additional license(s) by the GSA Customer (the "Registered Number of Users"). In the event that the GSA Customer renews the Support Services for a number of users which is less than the Registered Number of Users (the "New Number of Users"), Varonis shall be entitled, at any time, to run an audit check (including through running a script) in order to verify the actual number of users applicable to the Software. In the event that any such audit reveals that the actual number of users applicable to the Software is higher than the New Number of Users, Varonis will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

2.  Software Subscription.
2.1.  Provision of Updates. Varonis shall make available to the GSA Customer, Updates of the Software, if and when Varonis makes such Updates generally available to its other customers then covered by the Software Subscription.

Updates shall mean new Versions, updates, modifications, Work Arounds (a technically reasonably feasible change in the operating procedure of the Software whereby the adverse effects of the Error on the normal operation of the Software are reasonably minimized), upgrades, patches, error-corrections, releases, hotfixes, service packs, feature packs, which are designed and released by Varonis to optimize and repair the operation of the Software or the Documentation, if and when generally made generally available by Varonis to its customers. Updates shall not include any new functionality, features or modules offered by Varonis as separate or additional products, components or add-ons ("Additional Products").

2.2.  Ability to Purchase Additional Products. Varonis shall make available to the GSA Customer, pursuant to the execution of a new GSA Customer Purchase Order, any Additional Products if and when Varonis generally offers such Additional Products to its other customers.

2.3.  Notifications. Varonis shall not be responsible to provide a notice on any Updates or Additional Products available.

3.  Error Verification and Classification
3.1.  Reporting of Error(s): An Error by Customer shall be reported in writing to Varonis by electronic mail. Each Error Report ("ER") shall state one Error and shall contain the following information:
   - A suggested Error Severity Level among one of the classes set out below;
   - A description of the command(s) and procedures that reveal the Error;
   - A description of the hardware and operating environment;
   - Specification of Version of the Software in question;
   - A short description of the Error;
   - Examples of input;
   - The resulting output;
   - The expected output;
   - Any special circumstances surrounding the discovery of the Error.

3.2.  Classification and Verification: For each ER received, Varonis shall:
3.2.1.  Confirm receipt of the ER by electronic mail within no later than 30 minutes.
3.2.2.  Analyze the ER, verify the existence of the Error(s) and classify the Error, at its sole and exclusive discretion, in one of the Error Severity Levels set forth below, if any:

   Severity 1  Severity 2  Severity 3  Severity 4

A down situation where the Software is non-operational and there is no known work-around.

With errors of this severity level, the Software may:
   • Repeatedly fail catastrophically;
   • Require repeated reboots of the system;
   • Impact any system connected to or monitored by the Software. A major function of the Software is unusable and no work-around is available, but the Software still supports some production functionality.

With Errors of this severity level, the Software may:
   • Be usable, but incomplete;
   • Fail catastrophically;
   • Require reboot of the system;
   • Suffer severe degraded performance (throughput/response). The Software is functional, but provides incorrect results or is not operating in accordance with the Specifications. Also includes Errors with a major function of the software for which there is a known work-around. With Errors of this severity level, the product may:
     • Have major errors in results returned;
     • Require use of a Work Around to address issue. All other problems with the Software other than those falling within the categories above.
With errors of this severity level, the Software may:
   • Have minor errors in results returned;
   • Operate in a manner inconsistent with technical Specifications.
   "Error" shall mean a reproducible failure in the Software resulting in one of the Error Severity Levels above, causing the Software not to operate in accordance with the Specifications (the published functionality and performance specifications for the Software appearing in the Documentation).

Notwithstanding the foregoing, "Error" shall not include any failure caused: (i) by the use or operation of the Software with any other hardware, software or programming languages or in an environment other than that intended or recommended by Varonis, (ii) by any bug, defect, error or malfunction in the Equipment or any hardware or software used with the Software or any other failure of the Equipment, such hardware or software to conform to their published specifications, (iii) due to modifications, alterations and repairs to the Software not made by Varonis or on its behalf, or (iv) due to misuse, accident or improper installation, support or maintenance.

4.  Technical Support Response Time
Severity Level | Response Time | Additional Info
---|---|---
Severity 1 | 4 hours during Varonis business hours | For additional info see section
5.1.1
Severity 2 | 6 hours during Varonis business hours | For additional info see section
5.1.2
Severity 3 | Next business day during Varonis business hours | For additional info see section
5.1.3
Severity 4 | Next business day during Varonis business hours | For additional info see section
5.1.4

5. Error Correction.
5.1. Method of Correction. Following receipt of Customer's "ER", Varonis and Customer will first attempt to resolve the problem over the phone or via email or other electronic means. If such remote attempts are unsuccessful, Varonis shall use commercially reasonable efforts to Correct Errors as follows:
5.1.1. For Errors classified by Varonis as Severity 1 Level Errors, Varonis shall immediately commence commercially reasonable efforts to create a Work Around within 7 days, and a subsequent final solution as soon as possible. Varonis shall constantly keep Customer informed of the progress of the Error Correction work.
5.1.2. For Errors classified by Varonis as Severity 2 Level Errors, Varonis shall immediately commence commercially reasonable efforts to create a Work Around within fourteen (14) days, and a subsequent final solution which as soon as possible. Varonis shall until completion of the Work Around, inform Customer of the progress of the Error Correction work at least once every three days.
5.1.3. For Errors classified by Varonis as Severity 3 Level Errors, Varonis shall commence commercially reasonable efforts to create a Work Around within fourteen (14) days, and a subsequent final solution at a reasonable time thereafter. Varonis shall until completion of the temporary solution, inform Customer of the progress of the Error Correction work at least once a week.
5.1.4. Correction of Errors classified by Varonis as Severity 4 Level Errors, if any, shall be repaired within a reasonable time taking into account Varonis' then current workload and planning.
5.2. Location. Any Error Correction shall be carried out by Varonis from Varonis' offices only and in no way will Varonis' be obligated to provide any on-site support or visit or be present in Customer's premises or in any other location. "Error Correction(s)" shall mean any modification, repair or replacement of the Software to remedy an adverse effect of such Error on the operation of the Software.

6. Provision of Telephone and Email Support. Varonis shall use commercially reasonable efforts, to supply during 9AM through 5PM ("Business Hours") on Business Days (Monday through Friday, not including federal holidays), consultation and advice to Customer, directly over the telephone or by Email. Answers will be given to questions regarding the use of the Software and its installation, configuration and Documentation. Furthermore, general advice regarding submitted ER's shall be given.

7. Customer Obligations
7.1. Cooperation. Customer will cooperate with Varonis regarding any Support Services, including without limitation by providing as much detail as available about reported Errors, and taking all such reasonable measures requested by Varonis in order to detect and provide further information with respect to each Error. Customer shall ensure the readiness of the Software (hardware situated at the Premises on which the Software is installed and operated), computerized systems, environment and personnel to the operation of the Software, and shall ensure the appropriate conditions required to enable Varonis to comply with its undertakings hereunder, including without limitation: (i) to enable Varonis to remotely access the Software, subject to the GSA Customer's security requirements; (ii) to ensure the availability of Customer's personnel required for the operation of the Software; (iii) comply with Varonis' reasonable administrative requirements; and (iv) provide Varonis or its representatives, subject to the GSA Customer's security requirements, remote control access to the server where the Software is installed.
7.2. Access. If requested by Varonis, subject to the GSA Customer's security requirements, the GSA Customer shall grant Varonis such access to the information, to the premises, and to the Equipment as may be necessary or appropriate for Varonis to perform its Support Services. Varonis shall not be responsible to any failure to provide Support Services due to GSA Customer's refusal to grant Varonis access reasonably required by Varonis to provide the Support Services.
7.3. Customer Contacts. Customer shall ensure that its contacts authorized to receive the Support Services are fully knowledgeable of the Software and of the underlying technologies and are capable of receiving remote instructions from Varonis and performing activities reasonably required by a computerized system operator.
7.4. Installation of Updates. Customer shall install any and all Updates of the Software within a reasonable time following the date in which they become available.

8. Warranty; Disclaimer; Limitation of Liability.
8.1. VARONIS UNDERTAKES TO PROVIDE THE SUPPORT SERVICES IN A TIMELY AND PROFESSIONAL MANNER. EXCEPT FOR THE ABOVE UNDERTAKING, VARONIS PROVIDES NO WARRANTY, EXPRESS OR OTHERWISE, WITH RESPECT TO THE SUPPORT SERVICES, AND VARONIS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
8.2. VARONIS' LIABILITY HEREUNDER FOR ANY DAMAGES WHICH CUSTOMER MAY SUFFER SHALL IN NO EVENT EXCEED THE AMOUNT OF THE MOST RECENT ANNUAL SUPPORT CONTRACT FEE PAID BY CUSTOMER TO VARONIS. IN NO EVENT WILL VARONIS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF VARONIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY VARONIS' NEGLIGENCE; (2) FOR FRAUD; (3) FOR EXPRESS REMEDIES UNDER LAW OR THE CONTRACT; OR (4) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. Contacting Varonis Technical Support

Two primary customer contacts may be designated for contacting Varonis technical support. All issues must be reported through these designated contacts.
9.1. **Email**
Customers may submit support issues via email to support@varonis.com any time. Email is only monitored during Varonis Business Hours as defined above.

Guidelines for interacting with the email generated from Varonis ticketing and tracking system:

9.1.1. Customer should choose appropriate subject lines to describe its question or issue.
9.1.2. Customer should send in separate email, each individual question or issue it may have, to allow for tracking separately.
9.1.3. If Customer copies additional individuals on the "first" email message to Varonis, those individuals will be added to the ticket in a "cc" list, and will receive emails from the tracking system each time the ticket is updated. If Customer would like to add additional individuals once the ticket has been opened, Customer should reply to the auto-generated email and ask Varonis to add such individuals.
9.1.4. Customer should be aware that Varonis cannot accept any file attachments that are executables, scripts or DLLs. Customer should send Varonis images by inserting them into a Word document. If Customer needs to send Varonis any of the above file types, please contact Varonis technical support to coordinate transfer of the data.
9.1.5. The maximum file size for attachments is 5 MB. If Customer needs to send Varonis larger files, please compress them into several archives and send each one separately or contact Varonis support to coordinate the data transfer.
9.1.6. All email will be converted to text. Customer should not rely on color/fonts to call Varonis' attention to answers.

9.2. **Phone**
Customers may submit support issues via phone to the Varonis support line. The applicable phone numbers are at http://www.varonis.com/services/support/index.html. The support line is monitored by a messaging service. When contacting the support line, please provide the representative a detailed message and a Varonis support representative will return the call.

9.3. **Support Web Site**
Customers may submit support issues via the Varonis support web site at http://support.varonis.com. Tickets that were submitted via the web will be handled and tracked as tickets that were submitted by email.

10. **The Support Services provided by Varonis pursuant to the principles herein do not and shall not cover any migration services or tools provided by Varonis, if any, and do not and shall not include any training services of any kind whatsoever.**
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. Scope. This Rider and the attached VBrick Systems, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A thereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800:2G (Feb 2011), as may be revised from time to time.

x) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412). Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

VBRICK SYSTEMS, INC.

**VBRICK SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**GRANT OF LICENSE**

The Software Product is being licensed, not sold, to Ordering Activity. In accordance with and subject to the terms and conditions of this Attachment A, Contractor grants Ordering Activity a personal, non-transferable, non-exclusive license to use the object code version of the Software Product and Documentation. All rights and title in and to the Software Product and Documentation and all derivative works thereof (as such term is defined by the United States Copyright Act (as amended) at Title 17 U.S.C. and in accordance with FAR 52.227-19), including without limitation copyrights and trade
secret rights, belong to Contractor and/or its partners, licensors and suppliers (collectively, "Suppliers"), and Contractor and its Suppliers hold title to each copy of the Software Product and Documentation, and any portion thereof. Contractor and its Suppliers reserve all rights to the Software Product and Documentation not expressly granted to Ordering Activity herein. This Attachment A grants Ordering Activity the following rights:

Software Product. Ordering Activity may install and use one copy of the Software Product, or any prior version for the same operating system, only on the number of computers and users for which the license is given pursuant to Ordering Activity’s Purchase Order. In addition, Ordering Activity may make a copy of the Software Product for backup purposes at no cost. Except as expressly provided herein, Ordering Activity may not copy, nor encourage or allow copying of, the Software Product or Documentation. Ordering Activity may not cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination or other distribution of the Software Product or the Documentation by any means or in any form without Contractor’s prior written consent.

Storage/Network Use. Ordering Activity may also store or install a copy of the Software Product on a storage device, such as a network server, used only to install or run the Software Product on Ordering Activity’s other computers over an internal network; however, Ordering Activity must acquire either a Single User License for each separate computer on which the Software Product is installed or run from the storage device, or a Single Building License or an Enterprise License (defined below). If Ordering Activity have acquired appropriate licenses to allow installation of the Software Product on a computer file server within Ordering Activity’s internal network Ordering Activity may also use such server to push firmware updates to other VBrick products. No server or network use of the Software Product is permitted except the uses expressly permitted in this Attachment A.

Single User License. Ordering Activity may use the Software Product on one computer only, or must have a license for each computer on which the Software Product is installed. A Single User License for the Software Product may not be shared or used concurrently on different computers or by separate users unless otherwise specified in Ordering Activity’s Purchase Order.

Connection License. Ordering Activity is granted license to interconnect a single external server to Ordering Activity’s VBrick Server Software; additional connections require purchase of additional connection licenses.

No Modification. Ordering Activity may not alter or modify the Software Product or create a new installer for the Software Product. The Software Product is licensed and distributed for viewing, distributing, and sharing media files. Ordering Activity is not authorized to integrate or use the Software Product with any software except software authorized by Contractor.

Automatic Connection. THE SOFTWARE PRODUCT MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE ORDERING ACTIVITY’S COMPUTER TO AUTOMATICALLY CONNECT TO THE INTERNET. ADDITIONALLY, ONCE CONNECTED, THE SOFTWARE PRODUCT MAY TRANSMIT ORDERING ACTIVITY’S SERIAL NUMBER TO CONTRACTOR OR ITS SUPPLIERS AND IN DOING SO MAY PREVENT USES OF THE SOFTWARE THAT ARE NOT PERMITTED.

Third-Party Website Access. The Software Product may allow Ordering Activity to access third-party websites ("Third-Party Sites"). Ordering Activity’s access to and use of any Third-Party Sites, including but not limited to any goods, services, or information made available for such sites, is governed by the terms and conditions found at each Third Party Site, if any. Third-Party Sites are not owned or operated by Contractor or its Suppliers. ORDERING ACTIVITY’S USE OF THIRD-PARTY SITES IS AT ORDERING ACTIVITY’S OWN RISK. NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS, OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NONINFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE THIRD-PARTY SITES.

Compliance With Licenses. If Ordering Activity is an entity, Ordering Activity agree that upon request from Contractor or Contractor’s authorized representative, Ordering Activity will within thirty (30) days fully document and certify that use of any and all Software Products at the time of the request is in conformity with Ordering Activity’s valid license(s) from Contractor and/or its Suppliers.

OTHER RIGHTS AND LIMITATIONS

Limitations on Reverse Engineering, Decompilation, and Disassembly. Ordering Activity may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Ordering Activity may not use the Software Product to conduct a service bureau or similar business for the benefit of third parties. Ordering Activity may not modify, adapt, translate, or otherwise create derivative works based on the Software Product or Documentation.

Separation of Components. The Software Product is licensed as a single product. Its component parts may not be separated for use on more than one computer beyond the licensed number of users. If the Software Product is an upgrade or a revision of a component of a package of software programs that Ordering Activity licensed as a single product, the Software Product may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

Dual Media Software. Ordering Activity may receive the Software Product in more than one medium. Regardless of the type or size of medium Ordering Activity receive, Ordering Activity may use only one medium that is appropriate for the computer or computers for which the license is given (pursuant to the Purchase Order). Ordering Activity may not use or install the other medium on another computer. Ordering Activity may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided below) of the Software Product.

Support Services. Contractor through VBrick may or may not provide Ordering Activity with support services related to the Software Product ("Support Services"). Any supplemental software code provided to Ordering Activity as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Attachment A. With respect to any technical information Ordering Activity may provide as part of the Support Services, Contractor through VBrick may use such information for its business purposes, including but not limited to product support and development.

COPYRIGHT

All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the Software Product), the Documentation or other accompanying printed materials, and any copies of them are owned and retained by Contractor and/or its Suppliers. Copyright laws and international treaty provisions protect the Software Product. Therefore, Ordering Activity
must treat the Software Product like any other copyrighted material, except that Ordering Activity may install a copy of the Software Product on a single computer, storage device or as otherwise provided in this Attachment A, provided that Ordering Activity keep the original solely for backup or archival purposes. Ordering Activity may not copy the printed materials accompanying the Software Product.

U.S. GOVERNMENT RESTRICTED RIGHTS
The Software Product and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, or RESTRICTED RIGHTS notice per 52.227-14 as applicable. Manufacturer is VBrick Systems, Inc. 12 Beaumont Road, Wallingford, CT 06492 USA.

LIMITED WARRANTY
THE SOFTWARE PRODUCT AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OR CONDITIONS, EXPRESS AND IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE PRODUCT'S OR THE DOCUMENTATION'S TITLE, NONINFRINGEMENT OF THIRD PARTY'S RIGHTS, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE FOREGOING, NEITHER CONTRACTOR NOR ITS SUPPLIERS WARRANT THAT THE SOFTWARE PRODUCT SHALL BE OPERABLE, UNINTERRUPTED OR ERROR-FREE, OR THAT IT MEETS ORDERING ACTIVITY'S REQUIREMENTS, OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR HARDWARE.

THE ENTIRE RISK AS TO THE USE, QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCT AND DOCUMENTATION IS WITH ORDERING ACTIVITY. NEITHER CONTRACTOR NOR ITS SUPPLIERS IS OBLIGATED TO PROVIDE ANY SUPPORT SERVICES TO ORDERING ACTIVITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF ALL WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY.

EXHIBIT A – VBRICK WARRANTY AND SUPPORT

THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

PRODUCTS OR PARTS WHICH ARE SAMPLES OR PROTOTYPES ARE SOLD "AS IS" "WHERE IS" WITH ALL FAULTS, i.e. WITHOUT ANY WARRANTY WHATSOEVER.

WHEN SUBMITTING AN ORDER FOR SOFTWARE MAINTENANCE (REFERED TO THROUGHOUT THIS DOCUMENT AS SUPPORT SERVICES) ORDERING ACTIVITY MUST CERTIFY THAT ORDERING ACTIVITY HAS READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE FOLLOWING ATTACHMENT A TERMS AND CONDITIONS. ADDITIONALLY, IF ORDERING ACTIVITY IS ACTING AS AN EMPLOYEE OR AGENT OF THE ORDERING ACTIVITY FOR THE VBRICK PRODUCT FOR WHICH SOFTWARE SUPPORT SERVICES ARE TO BE PROVIDED, ORDERING ACTIVITY FURTHER CERTIFY THAT ORDERING ACTIVITY HAS FULL LEGAL AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THIS ATTACHMENT A ON BEHALF OF THE ORDERING ACTIVITY.

DO NOT SUBMIT ORDERING ACTIVITY’S ORDER UNTIL ORDERING ACTIVITY HAS CAREFULLY READ, UNDERSTOOD AND AGREED TO THESE ATTACHMENT A TERMS AND CONDITIONS. IF ORDERING ACTIVITY DOES NOT AGREE TO THESE ATTACHMENT A TERMS AND CONDITIONS, OR IF ORDERING ACTIVITY DOES NOT HAVE LEGAL AUTHORITY TO ACCEPT THEM ON BEHALF OF THE ORDERING ACTIVITY, CONTRACTOR WILL NOT ACCEPT ORDERING ACTIVITY’S ORDER.

THE CHART BELOW IS A SUMMARY OF THE WARRANTY TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR’S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR’S LIMITED WARRANTY ARE AS SET FORWARD BELOW.

<table>
<thead>
<tr>
<th>VBrick Maintenance Services Offerings</th>
<th>Gold Program</th>
<th>Gold Plus Program</th>
<th>Platinum Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hardware Warranty. Standard RMA (guarantee five-day turnaround after receipt)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hardware Warranty. Next day RMA</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Minor Software releases and patches</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Major Software releases</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>E-mail/Phone Support (Response within 24 business hours)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>E-mail/Phone Support (Response within 4 business hours)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Level 3 Telephone Support 8:30 – 7 pm (Monday to Thursday)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Level 3 Telephone Support 8:30 – 5:30 (Friday)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Level 1, 2 Telephone Support 8:30 – 7 pm (Monday to Thursday)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Level 1, 2 Telephone Support 8:30 – 5:30 (Friday)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>After hours priority number (Level 3 only. 4 hour response time)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Web-Based Knowledgebase</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Onsite Support (Level 3 only)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Subject to availability and restrictions
I. PRODUCTS COVERED.

Contractor warrants to Ordering Activity the VBrick Software and Manufactured Equipment, including hardware, software and firmware (the “Equipment”); (i) to be free from defects in material and workmanship under normal use and service, and (ii) to conform in all material respects to the printed specifications for the Equipment which have been delivered to Ordering Activity in connection with Ordering Activity’s purchase of the Equipment.

Provision of Software Maintenance Software Support Services by Contractor through VBrick are conditioned upon Ordering Activity having deployed the current shipping release of the respective VBrick Product for which such Software Support Services are to be provided*. Only these Attachment A terms and conditions, notwithstanding any preprinted or other terms and conditions on Ordering Activity’s Purchase Order shall govern Ordering Activity’s purchase and Contractor’s provision of Software Support Services.

*Upgrades to the latest version will be provided free of charge according to the program purchased by the Ordering Activity. Contractor does not guarantee it can support versions of software other than the current shipping release.

II. LENGTH OF WARRANTY.

Warranty and Software Maintenance shall commence upon the date indicated in the Contractor confirmation notice and shall continue in full force and effect for a period of one (1) year. Ordering Activity may, at the time of your initial order, purchase up to five (5) years of Subscription Service. Contractor will provide Ordering Activity with no less than thirty (30) days prior written notice of any pending Software Subscription Service changes with details on any pricing and/or modifications to these Attachment A terms and condition.

III. WHO OR WHAT IS COVERED?

This Limited Warranty covers only the VBrick Software and VBrick Manufactured Equipment acquired by the original Ordering Activity.

IV. EXCLUSIONS.

This warranty shall be void if the Ordering Activity fails to use or maintain the Software or Equipment in accordance with Contractor’s specifications or instructions, or if the Software or Equipment or any part thereof has been subject to any unauthorized modifications, improper operation, user negligence, service by an unauthorized person, company or association, use with any unauthorized attachment, device or feature, accident neglect, misuse, tampering, acts of God, or any event other than ordinary use.

The following points are not included in Contractor’s Limited Warranty and Gold and Platinum programs

• Support on any product not manufactured or produced by VBrick
• Professional services:
  • Integration with 3rd party equipment,
  • Installation support for new VBrick equipment
  • Contractor through VBrick Technical Support Services personnel performing or providing over the phone a step by step upgrade of the Equipment.
  • Support Services related to the relocation of VBrick equipment or the elimination or addition of new VBrick equipment or third party equipment, such as network equipment, audio and video devices, or custom software applications or programs.
  • Feasibility Studies
  • Equipment Upgrades/Updates that also require hardware upgrades in order to utilize new functionality of the software. Any such hardware upgrades is not covered. Ordering Activity may purchase the hardware upgrades at the price set forth in the latest current Contractor GSA Price List.

V. LIMITATION OF LIABILITY.

Contractor’s obligation and Ordering Activity’s remedy for any failure of the Equipment is limited to the repair or replacement of any part of the Software and/or Equipment at Contractor’s discretion, which examination shall disclose to Contractor as defective. Contractor reserves the right to satisfy its warranty obligations in full by refunding the purchase price of the Equipment. Nothing herein shall obligate Contractor to make such a refund.

Software Updates and Upgrades: If Contractor, in its discretion, creates Software Updates or Software Upgrades to the VBrick Product during the term for which Ordering Activity has purchased Software Support Services, Contractor shall provide all such Software Updates and Software Upgrades to Ordering Activity designated technical contact. Distribution of Software Updates or Software Upgrades does not include installation by Contractor. Contractor will provide Ordering Activity with all such Software Update or Software Upgrades when Contractor makes them available to its general customer base for the VBrick Product. All Software and related materials provided pursuant to Software Support Services, including documentation and program materials are subject to these Attachment A terms and conditions for the VBrick Product.

VI. HOW TO OBTAIN WARRANTY SERVICE.

To receive warranty services, Ordering Activity must register equipment under their name upon arrival at http://registration.vbrick.com, or via mail to:

Technical Support Services – Registration Department
12 Beaumont Rd
Wallingford, CT 06492

Ordering Activity must notify Contractor through VBrick promptly by telephone, and/or via our website of any alleged defect with the Equipment or software, including a detailed description of such alleged defect. For warranty verification purposes, the Ordering Activity must furnish VBrick Technical Support Services with the equipment serial number or warranty contract number. Failure to provide this number may delay service response time or require payment for services. VBrick’s telephone number for warranty service is (203) 303-0222. VBrick’s support website is located at http://www.vbrick.com/support. Upon notifying VBrick of an alleged defect with the Equipment and after defect has been verified by VBrick’s Technical Support Services, Ordering Activity agrees not to use the Equipment until further notice by VBrick. Ordering Activity shall bear all risks of operation, if Ordering Activity operates the Equipment prior to VBrick’s determination that the Equipment is suitable for operation, and VBrick shall bear no liability...
whatevery for any damages, losses or claims that may arise due to such operation.

Upon notification of a possible defect and after defect has been verified by VBrick’s Technical Support Services, Contractor through VBrick will provide to customer a Return Merchandise Authorization (“RMA”).

Technical Customer Support is available via telephone at (203) 303-0222, email: support@vbrick.com, or website: http://www.vbrick.com/support, from 8:30 AM to 7:00 PM Monday to Thursday and 8:30 AM to 5:30 PM Friday (U.S. Eastern Time).

Priority will be given to Ordering Activities who have purchased Extended Warranty / Maintenance Program. Expected response time for Gold products is 24 business hrs and 4 business hrs for Platinum products.

VII RETURN MATERIAL AUTHORIZATION (RMA)

All equipment under abnormal operation must be verified by a VBrick Technical Customer Support representative before it is assigned a Return Material Authorization (RMA) number. If Ordering Activity elects to avoid the verification process, a PO for VBrick’s in-house diagnostics fee (consult latest GSA price list for diagnostics fee charges) will be required. If equipment is deemed faulty, diagnostic fees will be void.

Replacement equipment will not be shipped without an RMA number assigned. All Equipment received by Contractor through VBrick without an RMA number will be returned to the Ordering Activity without being repaired. Ordering Activities must return the Equipment in need of repair with the same serial number as reported in the RMA. If equipment with a different serial number is returned under the RMA, the equipment will be returned without being repaired. Ordering Activity is responsible for properly packing the Equipment before it is shipped to Contractor through VBrick.

If Contractor through VBrick determines that the defect was not caused by accident, improper use, abuse, neglect, unauthorized alteration or service, inconsistent use with the specifications or any use other than ordinary use, VBrick shall, at its option, repair or replace the applicable part(s) of the Equipment within the limits of the program in which the Equipment is enrolled, and at VBrick’s expense, return the Equipment to the Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Next Day Shipment: ensures that a replacement for defective Equipment will be shipped to the Ordering Activity before requiring the Ordering Activity to return the defective Equipment to Contractor through VBrick. Equipment will be shipped to arrive at Ordering Activity’s site the next business day after dispatch. However, any requests for replacement Equipment processed in North America after 3:00 PM Eastern Time (ET) may ship the following business day for second business day delivery. Any international requests for replacement processed after 3:00 PM ET may ship the following business day for international delivery. Delivery times depend upon each country customs regulations. Contractor through VBrick is not responsible for any customs or tax charges related to any country other than the U.S.A. A replacement Equipment may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to VBrick within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Ordering Activity. Any single request for a single shipment of five (5) or more Equipment of the same type may be subject to delays.

DOA (Dead on arrival): A product can be deemed as DOA, after troubleshooting by Contractor through VBrick Technical Support Services, if it is not fully functioning when it is setup for the first time or received with damage. It does not have to be completely dead or non-functioning to qualify for DOA. It could be anything from a unit not powering up to a unit with a bent connector. If it's not fully functional or has damage when opened and setup for the first time, it qualifies as “DOA” and eligible for a cross ship replacement if within 30 days of the original ship date and registered runtime of the product is not more than 4 days. After 30 days, follow normal RMA process unless Manager of Support Services approves expedited RMA process.

VIII. REPLACEMENT PARTS

Parts replaced during the Limited Warranty Period, as applicable, will be covered for the remaining term of such period or for thirty (30) days from time of replacement, whatever is longer. Such replacement parts may, at Contractor’s option, be new or remanufactured. All parts removed from warranted Equipment shall become property of Contractor.

IX. PLATINUM PROGRAM - EXTENDED WARRANTY / MAINTENANCE -

Ordering Activities may purchase VBrick’s Extended Warranty / Maintenance Program (Platinum) for their equipment at any time within thirty (30) days from the date indicated in the VBrick confirmation notice -and for additional 1 year incremental periods if renewals of the Extended Warranty / Maintenance Program are purchased (the “Extended Warranty / Maintenance Program”).

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and major software releases.

X. GOLD and GOLD PLUS PROGRAMS - EXTENDED WARRANTY / MAINTENANCE -

Contractor through VBrick’s Limited Warranty Gold Program is in effect for one (1) year from the date indicated in the VBrick confirmation notice -and for additional periods if renewals of the Extended Warranty / Maintenance Program are purchased (the “Extended Warranty / Maintenance Program”). Periods must be consecutive one to each other. Ordering Activity shall not be allowed to renew the program for their Equipment and/or Software in the case the program period expired for the Equipment and/or Software in question and Ordering Activity missed to renew between 30 days of renewal due date.

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick’s facilities. After this period this program only covers technical support and minor software releases.

XI. SOFTWARE COVERAGE

Software: means all computer programming code, entirely in binary form, which is directly executable by a computer and includes those computer programs which have been licensed to Ordering Activity either as a separate product or as part of another VBrick Product.
Software coverage includes the following:

- **Major Software Release (Software Upgrade):** initial or new version of a software product or application. It means a version of the Software as classified by Contractor through VBrick which has been enhanced, improved and/or modified and replaces the existing version of the Software. This includes any minor software releases, user interface changes, usability changes, and new features and functions. As an example a major release is denoted by a version change from 2.0 to 3.0.
- **Minor Software Release (Software Update):** piece of software designed to correct discovered deficiencies and/or bugs affecting performance to the software description, program or its supporting data. This includes improved performance, bugs fixes, or graphics replacement. As an example a minor releases is denoted by version changing from 2.0 to 2.1.
- Software upgrades during the Extended Warranty/Maintenance Program period. The upgrades will be provided to the Ordering Activity via CD-ROM or VBrick's website. The Ordering Activity is required to perform the upgrade.
- Software upgrades may not include upgrades that require disassembly of the Equipment.

**XII. HARDWARE COVERAGE**

Hardware coverage includes the following:

- Repair or replacement of defective Equipment during Warranty Program period.
- Firmware upgrades (upgrades of code that require disassembly of Equipment).

**XIII. TECHNICAL SUPPORT SERVICES**

The following is an explanation of services performed at each level:

- **Level 1:** provide answers and helpdesk for Equipment features. Basically all the “what” questions. This information can be found in the Equipment Documentation.
- **Level 2:** diagnose and troubleshoot complex network problems including multicast issues. Diagnose and troubleshoot Server software related problems. Provide answers on how to perform upgrades. Basically able to answer the entire “how” questions. This information can be found in the Equipment documentation and in training materials.
- **Level 3:** diagnose and troubleshoot “error and abnormal Equipment behaviors”.

Onsite Support: When a problem cannot be resolved by utilizing remote technical support, Contractor through VBrick will dispatch an engineer to arrive on-site pursuant to the Service level purchased by Ordering Activity. VBrick will not be held responsible for delays in the delivery of the services due to Ordering Activity's stoppage to provide access to Ordering Activity's facilities or due to security requirements. Contractor through VBrick may comply with all Ordering Activity imposed security requirements.

The Extended Warranty/Maintenance Program is obtained in the manner outlined in Part IX, X above and is limited as provided in the introduction and Parts III, IV, V, VII, VII and XI, XII, XIII above.

**XIV. PRODUCTS OUT OF WARRANTY RE-JOINING A WARRANTY PROGRAM**

- No product can be renew under the old warranty program except for products from Ordering Activity and only until the new GSA pricing becomes effective.
- If warranty coverage has lapsed, there can be NO Hardware repair claim made for a minimum of 60 days after the renewal. If a claim is made within the first 60 days - it will be billed to the Ordering Activity at then-current GSA repair rate.

**XV. REPAIR SERVICE OUTSIDE WARRANTY OR MAINTENANCE PROGRAM POLICY**

In the event that Equipment requires service that is not covered by Contractor's Limited Warranty or any other Program, Equipment may be shipped to Contractor through VBrick for repair. Ordering Activity must notify VBrick’s Technical Customer Support of the problem via telephone at (203) 303-0222, or via website at http://www.vbrick.com/support, obtain a RMA and ship the Equipment to VBrick, at Ordering Activity’s expense. Repairs are performed under flat fee charges (please refers to latest Contractor’s GSA price list for charges). Contractor through VBrick will repair the Equipment within five (5) business days from the date the equipment is delivered at VBrick’s facilities and will, at VBrick’s expense, return the Equipment to Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Limited Services Warranty. THE PROVISION OF SOFTWARE SUPPORT SERVICES DOES NOT EXTEND, MODIFY OR ENHANCE THE ORIGINAL SOFTWARE WARRANTIES, IF ANY, FOR THE VBRICK PRODUCT(S). CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SOFTWARE SUPPORT SERVICE(S) PROVIDED HEREUNDER.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. Scope. This Rider and the attached Vectra Networks, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in this Rider are hereby superseded.

ss) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

tt) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

uu) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

vv) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

ww) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

xx) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

yy) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

zz) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

aaa) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

bbb) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

ccc) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ee) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

ff) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

gg) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

hhh) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

iii) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

jjj) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

kkk) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

lll) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

mmm) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

nnn) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

VECTRA NETWORKS, INC.

VECTRA NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

ATTACHMENT A - VECTRA NETWORKS, INC.

1 Definitions

“Hardware” means the VECTRA hardware products set forth in the Order.

“Product” means the VECTRA security services product(s) set forth in the Order that consist of Hardware, Software, and/or Subscriptions.
“Order” means an ordering document issued by Ordering Activity that specifies Product(s) to be provided under this Agreement.

“Software” means the executable code version of VECTRA’s software products set forth in the Order and any updates thereto furnished by VECTRA under this Agreement.

“Subscriptions” means subscription-based Software or services provided by VECTRA to Ordering Activity for a fixed or recurring period, subject to subscription fees for each such period as set forth in the Order.

2 Scope

2.1 Authorized VECTRA Resellers. While VECTRA shall remain the “licensor” for purposes of the grant of the licenses and other rights hereunder, and Ordering Activity shall remain the “licensee” for purposes of the obligations contained herein, Ordering Activity shall contract directly with the authorized VECTRA reseller for the purchase of Hardware and/or Maintenance provided by such authorized VECTRA reseller.

3 Products and Services

3.1 Reserved.

3.2 Software License. Subject to the terms and conditions of this Agreement and the applicable Order, VECTRA grants to Ordering Activity a nonexclusive, nontransferable, limited license to use the Software in accordance with the applicable user documentation and license keys provided by VECTRA solely for Ordering Activity’s internal use: (i) at the Ordering Activity facility authorized in the Order, (ii) during the period for which Ordering Activity has purchased a then-current license and Subscription, (iii) by Licensee employees up to the number of users for whom then-current licenses and Subscriptions have been paid, and (iv) for the measured bandwidth usage (“Measured Usage”), up to the service level set forth in the Order (“Service Level”).

3.3 Subscriptions. The Subscriptions will commence on the Effective Date (or other applicable start date specified in the Order) and will continue for the period set forth in the Order (the “Initial Subscription Term”).

3.4 Maintenance and Services. To the extent maintenance services are provided by VECTRA, such maintenance services are subject to Exhibit A (“Maintenance”). Installation, training and other support services may be provided if set forth in the Order, subject to the terms set forth in Exhibit A.

3.5 Evaluation. Any Hardware, Software or Subscriptions provided for evaluation or at no charge or for a nominal charge may only be used for evaluation during the evaluation period set forth in the Order, not to exceed 90 days (“Evaluation Period”) and solely for considering whether to purchase the applicable Product from Ordering Activity and not for any other purpose or any productive use. Ordering Activity shall return and discontinue all use of such Products at the end of the Evaluation Period.

3.6 Restrictions. Ordering Activity shall not (and shall not permit any third party to) (i) copy, modify, translate, reverse engineer, decompile, disassemble or otherwise reduce the Software or Subscriptions to human perceivable form or attempt to discover underlying source code, algorithms or techniques, except to the extent that such activities may not be prohibited under applicable law, (ii) provide, lease, use for timeshare or service bureau purposes, or lend or otherwise allow use of any Product by or on behalf of any third party or at any location other than the Ordering Activity facility authorized in the Order, (iii) disclose any benchmarking, competitive analysis or other results obtained from any Product or use any Product or portion thereof to develop any similar item or any competitive products or services, (iv) use or remove the applicable Software or Subscriptions from any Hardware on which or for which they are provided under the applicable Order, (v) attempt to disable or circumvent any license key, encryption or other security device or mechanism used in connection with the Product, Software or Subscriptions; or (vi) remove or otherwise interfere with any portion of the Product designed to monitor Ordering Activity’s compliance with this Agreement. Ordering Activity acknowledges that Software and Subscriptions may include license keys and other features that disable use at the end of the applicable license or Subscription Term, or once the Service Level set forth in the Order is met.

3.7 Proprietary Rights. The Software and Subscriptions are licensed and not sold. VECTRA shall retain ownership of all Software and Subscriptions and all intellectual property rights relating thereto. Ordering Activity agrees that VECTRA may use and exploit without restriction any error reports, suggestions and other information provided by Ordering Activity with respect to the Products and shall own any fixes, modifications, improvements and new versions made by VECTRA based on such information. The Products, Software, documentation and other non-public and non-commercial information provided by VECTRA are confidential to VECTRA and shall not be disclosed by Ordering Activity to any third party. All implied licenses are disclaimed and all rights not expressly granted herein are reserved to VECTRA.

3.8 Data Access. VECTRA collects personally identifiable information uploaded during registration or account administration and information provided during support requests (collectively, “Ordering Activity Administrative Data”). Ordering Activity Administrative Data includes, for example, name, email address, phone number, and VECTRA-generated licenses associated with a Ordering Activity’s account or email address. In the provision of the Product or a Subscription (including services related thereto), VECTRA may receive, store, process, and utilize network traffic data, including system stability data, threat detection information, user experience data, user interface data, and session and detection metadata (including packet capture data) (such data, “Ordering Activity Traffic Data” and, together with Ordering Activity Administrative Data, all such data is “Ordering Activity Data”). Without limiting the foregoing, VECTRA may automatically access, process, and retain Ordering Activity Traffic Data transferred on networks to which Ordering Activity connects any Product for purposes of product improvement, analysis, and evaluation as follows:

a. Default Access. VECTRA may monitor and access: (i) system stability data, including uptime statistics for various processes; hardware, software and network failure indicators; and back trace and call stack data; (ii) threat detection information, including the number, type and score of each threat detection instance (based on VECTRA proprietary metrics); the attribution of
each threat detection to an anonymized host; and the score for each anonymized host; (iii) anonymized user experience data, including the last login time; the frequency of logins; and User Interface clickstream data; and (iv) interface data.

b. **Optional Metadata Access.** As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Section 00a) monitor and access nonidentifying session and detection metadata, including DNS, HTTP and session data; detection details; host ID mapping data; and precursors.

c. **Optional Virtual Private Network ("VPN") Access.** As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Sections 0a and 0b) receive VPN access to Ordering Activity’s network, monitor and access packet capture data, and facilitate troubleshooting. 3.9 **Data Access Consent.** Ordering Activity acknowledges that the Products detect threats and attacks by monitoring Ordering Activity Data, and that the Products may be less effective in detecting threats, attacks, or other suspicious or unauthorized activity if the Products do not have adequate access to Ordering Activity Data. Ordering Activity authorizes and directs VECTRA to store, process, retrieve, and disclose Ordering Activity Data for the following purposes: (i) providing service to Ordering Activity; (ii) analyzing, maintaining and improving VECTRA’s products and services; (iii) complying with legal, governmental or contractual terms or requirements, including without limitation good faith efforts to comply with such terms or requirements; (iv) making malicious or unwanted content anonymously available to its licensors for the purpose of further developing and enhancing VECTRA products and services; and (v) anonymously aggregating and statistically analyzing malicious or unwanted content. In addition, VECTRA may use Ordering Activity Administrative Data for the following purposes: (i) to inform Ordering Activity about products, seminars and services VECTRA believes may be of interest to you; (ii) to contact Ordering Activity if VECTRA needs to obtain or provide additional information; and (iii) to verify the accuracy of VECTRA’s records. VECTRA may use web analytics and cookies as set forth in the VECTRA Privacy Policy attached.

3.10 **Data Protection by Ordering Activity.** Ordering Activity represents and warrants that Ordering Activity’s use of the Products and Subscriptions complies with all applicable laws, including those related to data privacy, data security, and international communications and that Ordering Activity has obtained any and all consents necessary for VECTRA to engage in data processing under this Agreement. Submission or provision of Ordering Activity Data to VECTRA shall be at Ordering Activity’s own risk, and VECTRA assumes no responsibility or liability for receipt of such Ordering Activity Data.

3.11 **Reserved.**

6 **Limited Warranty**

6.1 **Limited Warranty.** Hardware as delivered by VECTRA will be free from material defects in materials and workmanship for a period of ninety (90) days from the date of shipment. Ordering Activity’s sole remedy, and VECTRA’s exclusive liability, with respect to such warranty will be to repair, replace or provide a refund of the purchase price (at VECTRA’s option) for the defective Hardware or portion thereof, subject to return within the applicable warranty period in accordance with VECTRA’s return materials authorization (RMA) procedures and provided the defect is not due to accident; unusual physical, electrical or electromagnetic stress; neglect; modification, alteration or misuse; or failure to properly install, operate and maintain in accordance with the manufacturer’s specifications. Software and Subscriptions are subject to maintenance as set forth in Exhibit A and not warranty. VECTRA does not warrant that Product will meet Ordering Activity’s requirements or function uninterrupted or error free. EXCEPT AS EXPRESSLY SET FORTH ABOVE, PRODUCTS, SOFTWARE, HARDWARE, SUBSCRIPTIONS AND ANY SERVICES ARE “AS IS” AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND VECTRA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

6.2 **RMA Procedures.** Prior to return of any Hardware, Ordering Activity will execute and report the results of any tests or diagnostics specified by VECTRA, confirm limited warranty status with VECTRA and obtain and affix an RMA number from VECTRA prior to shipment. Returns with RMA number are to be shipped by Ordering Activity, freight pre-paid, to VECTRA’s designated return or repair facility, so that they are received within 2 weeks of obtaining the RMA number. Any Hardware found to be out-of-warranty, including any with a voided warranty, is subject to charges for processing and repair or replacement at VECTRA's then-current GSA Schedule Contract rates.

7 **Reserved.**

8 **Reserved.**

9 **Export; FCPA.** Products may not be exported without prior written consent of VECTRA. Ordering Activity warrants and hereby gives written assurance to VECTRA that Ordering Activity will comply with all U.S. and foreign export and re-export restrictions applicable to the Products, documentation and technical information provided hereunder. Company warrants that it shall comply with the Foreign Corrupt Practices Act ("FCPA") in all dealings with, by, for or on behalf of VECTRA, and shall not offer, promise, give, demand, seek or accept, directly or indirectly, any gift or payment, consideration or benefit in kind that would or could be construed as an illegal or corrupt practice.

10 **Reserved.**
Registration Information
When you register to download content from Vectra, we may ask you to provide us with personal information that may include your name, company, job position, email address, and phone number.

We are committed to protecting your privacy. Authorized employees within the company on a need to know basis only use any information collected from individual visitors. We constantly review our systems and data to ensure the best possible service to our customers. We will not sell, share or rent your personal information to any third party.

User Communication
If you send us email or other communications, we may retain the content of your communications together with your email address and our responses.

We may send you information that we think you will find interesting. If you want to be removed from our mailing list at any time, you may opt out of these communications by contacting info@vectranetworks.com

Links to External Sites
We are not responsible for the practices employed by websites linked to or from our website nor the information or content contained therein. Often links to other websites are provided solely as pointers to information on topics that may be useful to the users of our website.

Please remember that when you use a link to go from our website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on other websites, including websites which have a link on our website, is subject to that website's own rules and policies. Please read over those rules and policies before proceeding.

We reserve the right to modify this privacy statement at any time. If we change how we use your personally identifiable information, we will notify you here, by email, or by means of a notice on our home page.

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EXHIBIT A

Maintenance Services

1. Maintenance Term. Maintenance service as set forth in this Exhibit A (“Maintenance Services”) commence on the Effective Date (or other applicable start date specified in the Order) and will continue until the end of the Subscription Term. If Ordering Activity elects not to renew Maintenance Services or fees are not kept current, Ordering Activity may re-enroll only upon prior written consent of VECTRA and payment of the applicable subscription fee for the coming period and all fees that would have been paid had Ordering Activity not discontinued Maintenance Services.

2. Maintenance Services. If Ordering Activity purchases such Maintenance Services, the following Maintenance Services will be made available during the applicable Subscription Term: (a) Updates released during the Subscription Term, and (b) Error resolution assistance for Errors in the Software reported by Ordering Activity during the Subscription Term, as further described below. Maintenance Services and Support will be provided only with respect to the then current version of the Software and only for active Subscriptions. VECTRA shall have no obligation to provide Maintenance Services or Support for: (i) altered or damaged Software or any portion of the Software incorporated with or into other software; (ii) Software or Subscription problems caused by Ordering Activity’s negligence, abuse or misapplication, use of the Software or Subscriptions other than as specified in VECTRA’s user manual or other causes beyond the control of VECTRA; or (iii) Software or Subscriptions installed or used on any hardware that is not supported by VECTRA. Support requests may be submitted online 24/7 at support.vectranetworks.com. For Error resolution assistance, VECTRA will use commercially reasonable efforts to correct any Error reported by Ordering Activity in the Software attributable to VECTRA, employing a level of effort commensurate with the severity of the Error, provided, however, that VECTRA shall have no obligation to correct all errors in the Software.

3. Ordering Activity Responsibilities. Ordering Activity is responsible for providing sufficient information and data to allow VECTRA to readily reproduce all reported Errors. If VECTRA believes that a problem reported by Ordering Activity may not be due to an Error in the Software or cannot be readily reproduced VECTRA will so notify Ordering Activity. Ordering Activity shall document and promptly report all Errors to VECTRA and take all steps necessary to carry out procedures for the rectification of Errors or malfunctions within a reasonable time after such procedures have been received from VECTRA.

4. Certain Definitions. For the purpose of this Exhibit only, the following terms shall have the following meanings:

“Error” means a reproducible programming error in the Software which significantly degrades the Software as compared to VECTRA's published performance specifications. Correction may be provided by patch, correction in the next Update, work-around or avoidance procedure, or other resolution to remedy the Error.

“Support” means technical support telephone or email assistance provided by VECTRA to a designated Ordering Activity support contact during normal business hours concerning the installation and use of the Product.

“Update” means a maintenance release of the Software designated as such by VECTRA and released on a general, regularly scheduled basis as part of standard maintenance to VECTRA's other maintenance customers for the same version of the Software without additional charge.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Veeam Software Corporation (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2(G) (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
This EULA is a legally binding agreement between licensee end user ("End User") and Veeam setting forth the terms and conditions governing the use and operation of Veeam’s proprietary computer software products (the “Software”) and the written technical specifications for the use and operation of the Software. The terms of this EULA shall apply to the Software, and any updated, modified, or supplemental version of the Software, unless otherwise agreed to in writing by Veeam.

1. Use of Software

1.1. License. Veeam grants to the End User a non-exclusive, non-transferable, limited license to use the Software, in accordance with the terms and conditions set forth in this EULA.

1.2. Restrictions. The End User shall not (a) modify, adapt, or create derivative works of the Software; (b) reverse engineer, decompile, or disassemble the Software; (c) rent, lease, sublicense, or otherwise distribute the Software; or (d) use the Software for any purpose other than its intended use as a management and backup solution.

2. Ownership

2.1. Intellectual Property. The Software is protected by copyright, trademark, and other intellectual property laws. Veeam owns all rights, title, and interest in and to the Software and all copies thereof.

3. Support and Updates

3.1. Support. Veeam shall provide support to the End User in accordance with the terms and conditions set forth in the Support Agreement.

4. Confidentiality

4.1. Confidential Information. The End User shall maintain the confidentiality of all Confidential Information disclosed by Veeam in connection with this EULA.

5. Term and Termination

5.1. Term. This EULA shall commence on the date of acceptance and shall continue until the earlier of (a) the expiration or termination of the applicable Support Agreement or (b) the earlier of cancellation or revocation of the license granted hereunder.

6. Indemnification

6.1. Indemnification Obligations. The End User shall defend, indemnify, and hold harmless Veeam from and against any claims, damages, losses, and expenses arising from (a) the End User’s infringement of any third-party intellectual property rights; (b) the End User’s violation of this EULA; (c) the End User’s breach of its obligations under this EULA; and (d) any claims brought against the End User by reason of the End User’s use of the Software.

7. Disclaimer of Warranties

7.1. Software as is. THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. VEEAM DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SOFTWARE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

8. Limitation of Liability

8.1. Indemnification Limit. VEEAM’S TOTAL LIABILITY FOR ANY CLAIM UNDER THIS EULA SHALL NOT EXCEED THE AMOUNT PAID BY THE END USER FOR THE SOFTWARE.

9. Miscellaneous

9.1. Governing Law. This EULA shall be governed by and construed in accordance with the laws of the State of [State Name], without giving effect to its conflict of laws provisions.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

VEEAM SOFTWARE CORPORATION

VEEAM SOFTWARE CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

Important - Read Carefully
This EULA is a legally binding agreement between licensee end user ("End User") and Veeam setting forth the terms and conditions governing the use and operation of Veeam’s proprietary computer software products (the “Software”) and the written technical specifications for the use and operation of the Software. The terms of this EULA shall apply to the Software, and any updated, modified, or supplemental version of the Software, unless otherwise agreed to in writing by Veeam.
the Software (the “Documentation”). Where the sense and context permit, references in this EULA to the Software include the Documentation. By downloading and installing, copying or otherwise using the Software, and/or otherwise accepting this EULA, End User agrees to be bound by the terms and conditions of this EULA. If End User does not agree to or accept the terms of this EULA, End User may not access or use the Software.

1.0 Definitions

1.1 “Fee(s)” means any License, Maintenance, professional services, consulting or other Fees agreed to by the parties as set forth in a Transaction Document.

1.2 "Maintenance" and “Maintenance Policies” have the respective meanings set forth in Section 7.0.

1.3 “Transaction” and “Transaction Document” have the following meanings: "Transaction(s)" is a License transaction pursuant to which End User: i) accepts this EULA as provided above and ii) takes actual or constructive possession of the Software. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, license keys, amendments to this EULA or other similar materials, signed or unsigned, (each a “Transaction Document(s)”), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Veeam, or authorized third party distributors, dealers, and/or other resellers of the Software. A Transaction Document may contain usage, business, legal and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this EULA be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this EULA and those set forth in a Transaction Document, the terms and conditions of this EULA will govern and control.

1.4 “Open Source” means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. A current list of Open Source Software used by Veeam can be found at http://www.veeam.com/eula-oss.html.

2.0 Grant of License

2.1 License Grant. When the Software is delivered to End User as part of a Transaction, End User will have, subject to the terms and conditions of this EULA, a perpetual, non-transferable, non-exclusive, license (“License”), to use the Software in object code format, solely for government purpose for the management and processing of its own data and not the data of any third party(ies). Veeam Software License is perpetual, unless the Software is delivered to End User as part of a Transaction on a non-perpetual basis for a defined period, in such case, the End User’s right to use such Software will cease on the end date of the defined period.

The data processing restriction set forth in the preceding paragraph will not apply to End User if End User a) has been accepted by Veeam, under “Veeam Cloud Provider Program” at http://www.veeam.com/veeam-cloud-providers.html and b) has accessed and is utilizing the Software with a stock-keeping unit number that designates End User as a “Cloud Provider” or similar description, thus authorizing End User to utilize the Software to perform systems management services for its customers.

3.0 Additional Terms

Nothing contained in this EULA is intended to prohibit or restrict the parties from mutually agreeing to enter into separate terms and conditions that i) modify or supplement the terms and conditions (including business and/or financial terms) of this i) EULA or the License granted to End User pursuant to this EULA; or ii) create or modify the terms a particular Transaction.

4.0 Evaluation License

A License designated as an “Evaluation” License in a Transaction Document authorizes End User to use one (1) copy of the Software for a 30 day period for non-production evaluation or demonstration purposes only.

5.0 Not for Resale License

A License designated as a “Not for Resale” License in a Transaction Document authorizes End User to use one (1) copy of the Software with full functionality for evaluation or demonstration purposes only, and for a defined period of time.

6.0 Limited Term License

A license designated as a “Limited Term” License in a Transaction Document authorizes End User to use one (1) copy of the Software in production environment at End User’s site for a defined period of time. The defined period for a “Limited Term” License commences immediately upon generation of the license key.

7.0 Maintenance

Maintenance and support (“Maintenance”) for the Software will be available in accordance with Veeam’s applicable Maintenance Policies then in effect and shall commence on delivery of the Software. Provided End User is current on Maintenance, End User will receive (a) online support and (b) any Software updates, enhancements and/or improvements that are included or otherwise separately defined under the Maintenance Policies and are not licensed by Veeam at its discretion to its customers for a separate charge. Veeam’s current Maintenance Policies can be found at http://www.veeam.com/support.html.

8.0 Copyright and Other Restrictions

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. The Software contains copyrighted material, trade secrets and other proprietary material of Veeam. All right, title and interest in the Software remains at all times with Veeam. In no event will End User directly or indirectly permit the Software to be decompiled, reverse engineered, or disassembled. End User will not disclose, transfer or otherwise make available the Software, or the results of any benchmark or other tests of the Software, to any third party without the prior written consent of Veeam. End User shall not remove any proprietary notices from the Software. End User may make one copy of the Software solely for backup or archival purposes.

9.0 Limited Warranty and Limitation of Liability

Veeam warrants that it has the right and authority to grant the License under this EULA. Veeam will defend or, at its option, settle any action against End User based upon a claim that its use of the Software infringes any patent, copyright or other intellectual property right of a third party, and will indemnify
End User against any amounts awarded against End User as a result of the claim, provided Veeam is promptly notified of the assertion of the claim and has control of its defense or settlement. Veeam warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for a warranty period of ninety (90) days from the date the Software is delivered to End User. In the event the Software fails in a material respect to operate in accordance with the Documentation during the warranty period and Veeam is unable to correct the defect, Veeam’s sole and exclusive liability and End User’s sole and exclusive remedy shall be a refund of the License fee, if any, paid by End User for the Software. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by End User.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY OR FIT FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VEEAM OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY VEEAM DISTRIBUTORS OR RESELLERS, SHALL CREATE ANY WARRANTY IN ADDITION TO, OR IN ANY WAY INCREASE THE SCOPE OF, THE LIMITED WARRANTY.

In no event will Veeam, its affiliates, resellers, or distributors or suppliers be liable for any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for lost profits, loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof.

10.0 Assignment
Except in the event of a sale or transfer by Veeam of all or substantially all of its assets or voting securities, neither party will assign all or any portion of its rights or obligations under this EULA to any third party without the prior written consent of the other party.

11.0 U.S. Government End Users
Use, duplication, or disclosure of the Software to or by the U. S. Government is subject to the provisions and restrictions as set forth in FAR 52.227-14 and FAR 52.227-19, or equivalent restrictions and provisions as set forth in DFAR 252.227-7013 and DFAR 252.227-7014.

12.0 General
This Agreement sets forth Veeam's entire obligation and End User’s exclusive rights with respect to the Software and, except to the extent otherwise specifically provided in a purchase order or other written communication or advertising signed or jointly issued by both parties with respect to the Software, supersedes any conflicting terms of any purchase order and any other communication or advertising with respect to the Software. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected. To the extent not preempted by federal law or regulation, this EULA will be governed by the laws of the State of Ohio, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods will not apply.

13.0 Export Controls
The Software is subject to U.S. Export Administration Regulations. Veeam prohibits any export or re-export of Veeam Software products, services, or technical data to any destinations subject to U.S. embargoes or trade sanctions, except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. End User agrees not to use or make available the Software to or on behalf of any person that is a citizen, national, or resident of, or that is controlled by the government of the countries with which the U.S. may prohibit export transactions. The following countries are subject to the United States embargo or restricted trade sanctions: Burma (Myanmar), Cuba, Iran, North Korea, the Republic of South Sudan, the Republic of the Sudan, Syria, or any other country with which the United States may prohibit export transactions.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Veriato ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

x) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010); and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government have sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VERIATO LICENSE, WARRANTY AND SUPPORT TERMS**

Details of the software licensed and Maintenance (defined below) should be provided on an order. Usage rights and other terms are defined in Exhibit A – Product Guides. The software, updates, documentation, and license serial number (Software) provided under an order, are licensed and are not sold.
1. TRIAL LICENSE. If the Software is provided without the payment of a license fee, then it is provided under a trial license. Veriato grants Ordering Activity a non-exclusive term license to operate the Software for the sole purposes of deciding whether it wants to purchase a license. The Software is provided AS IS, with no warranty during this time period.

2. LICENSE GRANT. Subject to the other terms of this agreement, Veriato grants Ordering Activity, under an order, a non-exclusive and non-transferable perpetual license up to the license capacity purchased to: operate the Software in its business operations and make one copy of the Software for archival and backup purposes.

3. RESTRICTIONS AND OWNERSHIP. ordering Activity cannot:
   - Sublicense, rent or lease the Software or use it as a service provider or as part of a service;
   - Reverse engineer (except to the extent expressly permitted by applicable law despite this limitation), decompile, or disassemble the Software; or
   - Copy any features, functions or graphics of the Software to develop a competitive product.
   - Utilize the software for the purposes of competitive analysis or for any other purpose outside of Ordering Activitys normal business operations.

Ordering Activity is entitled only to those rights as are expressly granted by this agreement. Veriato retains all ownership and intellectual property rights in and to the Software.

4. RESERVED.

5. RESERVED.

6. WARRANTY DISCLAIMER. the Software is provided 'AS IS.' VERIATO DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. RESERVED.

8. RESERVED.

9. ANNUAL MAINTENANCE. If Ordering Activity purchases the Software technical support and update service for a fee (Maintenance), then the following will apply. Details on the Maintenance programs are located http://www.Verianto.com/support/ FOR INFORMATIONAL PURPOSES ONLY.

10. RESERVED.

11. U.S. GOVERNMENT RESTRICTED RIGHTS. The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227-19, as applicable. manufacturer is: Verianto Corporation, 1555 Indian River Blvd., Building B-210, Vero Beach, FL 32960.

12. RESERVED.

13. EXPORT LAWS. Ordering Activity agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Software or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.

14. RESERVED.

Exhibit A - Product Guide
This Product Guide states the usage rights and other terms associated with each Verianto product that Ordering Activity has purchased (the "Product Terms").

Here is how you find the Product Terms for Ordering Activity’s products:

1. Determine the License Duration. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. The License Duration will either be:
   - Perpetual
   - Term
   - Subscription

For more information about License Duration, see the License Duration table below.

2. Determine the License Category. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. An example is Spector360 Per Monitored End Point. The License Category is Monitored End Point.

For more information about License Category, see the License Category table below.
### License Duration Table

<table>
<thead>
<tr>
<th>License Duration</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perpetual</td>
<td>The license will never expire. The Product can be upgraded to the latest version within the active maintenance period.</td>
</tr>
<tr>
<td>Term</td>
<td>The license is granted for a fixed period of time and may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service. When the license expires at the end of the time period, recording will cease unless a new license is applied.</td>
</tr>
<tr>
<td>Subscription</td>
<td>The license is granted for a fixed period of time. When the license expires at the end of the time period, the product will cease to operate, and access to data or reporting will no longer be available.</td>
</tr>
</tbody>
</table>

### License Category Table

<table>
<thead>
<tr>
<th>License Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitored End Point</td>
<td>Each computer or device to be monitored. These licenses may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service.</td>
</tr>
<tr>
<td>Session Host</td>
<td>Each server or machine hosting thin client computing sessions and/or virtual desktops (for example, by using Citrix, Microsoft, VMware or similar visualization software products or service) to be monitored. These licenses may not be moved from Session Host to Session Host, except in cases where the initially licensed Session Host is taken out of service.</td>
</tr>
<tr>
<td>Node</td>
<td>Each unique IP address and/or hostname that is monitored, scanned, or otherwise managed by the Software.</td>
</tr>
<tr>
<td>Host</td>
<td>Each server or desktop computer that has an instance of the Software installed on it.</td>
</tr>
<tr>
<td>Floating</td>
<td>Once client software has been installed on a computer, the license may be transferred to another computer, as long as the total count of licenses for client computers does not exceed the number of floating licenses purchased.</td>
</tr>
<tr>
<td>Device</td>
<td>Each PC, Mac, Tablet, or Smartphone the Software is installed on. These licenses may not be moved from Device to Device, except in cases where the device is taken out of service.</td>
</tr>
</tbody>
</table>
Ordering Activity is hereby notified that the Software may collect certain information from the Ordering Activity and transmit such information back to Veriato. Such information may include, without limitation, statistics relating to how often the Software and tools are started and completed, the duration of use of the Software, performance metrics relating to the Software, and Software configuration settings.

In addition, Ordering Activity is hereby notified that (1) the Software may require a registration process whereby machine specific identifiers (that have been encrypted and are unique but anonymous) such as the username and email address for the user are transmitted to Veriato's licensing server to allow Veriato to generate a unique key that is bound to the specific computer on which the Software may be used, (2) the Software may communicate with Veriato's servers and allow Ordering Activity to download updates when they are available, (3) the Software may provide a 'Feedback' facility that allows Ordering Activity to send suggestions and ideas for improving the Software ("Feedback"), (4) the Software may include a mechanism to transmit information to Veriato regarding unhandled exceptions, and (5) the Software may make connections to Veriato servers to verify license validity.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached X1 Discovery, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.**Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
These terms correspond to the X1D Search 8 software product ("Software").

1. License. Subject to Ordering Activity compliance with the terms and conditions of this License and payment of any applicable license fees, Contractor grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to download, install and use a single copy of the Software.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

X1 DISCOVERY, INC.

These terms correspond to the X1D Search 8 software product ("Software").

1. License. Subject to Ordering Activity compliance with the terms and conditions of this License and payment of any applicable license fees, Contractor grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to download, install and use a single copy of the Software.

GS-35F-0511T

www.ecamerica.com

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7. Data Collection and Privacy. Use of the Software is subject to our Privacy Policy.

INFORMATION COLLECTED

Automatic Collection: Like most other websites, we use common internet technologies such as cookies and Web beacons to keep track of users' interactions with the Site and the Services. This may include your internet protocol (IP) address, Referring website addresses, browser type and access times and mobile carrier or internet access provider.

Volunteered: If you register with us, subscribe to or use downloadable software or web-based applications, fill out a profile page, purchase products or services, send us an email, or share personal information with us in any other way, we will collect and store whatever information you share. This obviously depends on what information you choose to provide but it may include your name, email address, credit card information or other billing information. The collection of this information is part of regular business practices and is necessary in order to complete transactions and properly run and administer these services. You do not have to share this information with us, but without it you may not be able to access certain content or features or participate in certain areas of the Site.

Publicly Posted: If you post information on public areas of the Site (or elsewhere on the internet) that information may be collected, stored and used by anyone, including us. We strongly recommend that you do not post any information that allows strangers to identify or locate you. Posting such information may result in unsolicited messages or contact from others, to say the least.

Installation Numbers. X1 software products may use a system of authentication and identification during installation of the software and on an ongoing basis to ensure that no member of the X1 software products is an authorized licensee. This phone home functionality is used to authenticate the server or device utilizing the X1 Services.

Support. X1 Services do not transmit results of any searches conducted by the user back to X1. To be clear, your case related information or other content is not provided back to X1. However, if you experience an error, the X1 Services will send log information to X1 for service and support purposes and such log data may include information about a user's profile, computer or device, and search history.

Credit Card Security. Providing you with a secure ordering experience is a high priority. When you submit an order through the Site, the order information is encrypted when it is transmitted for credit card processing to X1 (and its credit card services provider). Encryption is a process by which we use software to scramble information in transit. The Site is also registered with site identification authorities to enable your browser to confirm X1's identity before any transmission is sent. The identity of our site is automatically confirmed behind the scenes prior to the transmission of any customer information requested to complete an online order so that your data reaches your intended target. When confirming an order to you by email, we reveal only the last four digits of your credit card numbers. Of course, we transmit the entire credit card number to the appropriate credit card company during order processing.

HOW DO WE USE THE INFORMATION WE COLLECT

We use this information to provide you with better service. It also helps our advertisers and partners provide you with more relevant offers, which in turn helps cover the cost of our services to you. Among other things, the information we collect enables X1 to customize the content you see, fulfill your requests for products and services and validate your user rights; improve services and support; improve services and support; improve services and support; improve services and support.
All Information (Both Anonymous and Personally Identifiable). In certain circumstances, we may share information we have collected, including personally identifiable information. For example:
We might share your personally identifiable information during due diligence or in preparation for or after a sale, merger, consolidation, change in control, transfer of substantial assets, reorganization or liquidation.

If you give us permission, we may share your personally identifiable information with third parties who might send you marketing and promotional information.

Your personal information may be transferred to anyone who is helping us make the Site and Services available and functional, like technical agents, payment processing vendors, other subcontractors, and our affiliates and consultants.
As in any purchase, if you provide your credit card information to us for purchases, your credit card company will be provided with all relevant information about us, item(s) purchased, cost and other information necessary to process the transaction.
We may disclose your personal information if permitted or required by law or is necessary to comply with the law enforcement or in response to a search warrant, subpoena or other legal process or where we believe such action is necessary in order to protect or defend our interests or the interests of our users or business partners.

CHILDREN UNDER 13

The Site is not intended for children under age 13, or for anyone under age 18 without involvement of a parent or guardian. The Site includes unmonitored content posted by users and sourced from other third parties and as you can imagine, such content may be unsuitable for children. We do not knowingly collect or distribute information from or about children under 13.

THIRD PARTIES

Like most other websites, we may engage third parties to directly gather non-personally identifiable information from users of the Site through automated means such as cookies. For example, we may engage a third party to help us track and analyze anonymous information from users who visit the Site or use the Services. This Privacy Policy does not cover how third parties use cookies or other technologies or any information they gather through such technologies.

The Sites and Services may contain links to websites or other properties and content operated by third parties over which X1 has no control. Their privacy policies may be different from our Privacy Policy, and you access such linked websites or third-party content at your own risk.

SECURITY

Information that X1 collects is stored on servers that X1 manages, using standard security procedures and practices appropriate to the nature of the information. Please be aware that no data transmission over the Internet can be guaranteed to be 100% secure. As a result, X1 cannot guarantee or warrant the security of any information you transmit on or through the Sites or Services and you do so at your own risk.

FOREIGN COUNTRIES

Your personal information may be transferred to and maintained on servers or databases located outside your state or country or to a jurisdiction where the privacy laws may not be as protective as those in your location. If you are located outside of the United States, please be advised that X1 processes and stores information in the United States and your use of our Site or Services constitutes your consent to and understanding of this processing.

CHANGES TO PRIVACY POLICY

X1 reserves the right to change this Privacy Policy at any time, and will do so by posting changes to this Privacy Policy on the Site.


ORDERING ACTIVITY UNDERSTAND AND AGREE THAT ORDERING ACTIVITY DOWNLOAD, INSTALL, AND/OR USE THE SOFTWARE AT ORDERING ACTIVITY OWN DISCRETION AND RISK AND THAT ORDERING ACTIVITY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ORDERING ACTIVITY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE. CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM ORDERING ACTIVITY DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE.

9. RESERVED.

10. Ordering Activity CONTRACTOR

11. Export Control; Government End Users. The Software is subject to United States export laws and regulations. Ordering Activity must comply with all domestic and international export laws and regulations that apply to the Software, which may include restrictions on destinations, end users and usage. If the Software is supplied to or on behalf of the United States Government, then the Software is deemed to be “commercial software” as that term is used in the Federal Acquisition Regulation system. Rights of the United States shall not exceed the minimum rights set forth in FAR 52.227-19 for “restricted computer software.” All other terms and conditions of this License apply.

12. Reserved.

13. Reserved.


Changes. We are constantly developing our Site and Services. This means that we may change or discontinue either or both without notice or liability to you. In addition, we may change all or part of the Agreement at any time, including these terms. We may make changes by posting the changed terms on the Site. YOUR CONTINUOUS USE OF THE SITE AND/OR OUR SERVICES WILL CONSTITUTE ACCEPTANCE OF THE CHANGED TERMS.

Third Party Content and Links. Contractor through X1 provides Services that allow you to view content on third party services. X1 is not a content provider and does not control the content or websites of such third party services. You acknowledge and agree that any third-party products or services are not the responsibility of Contractor or X1 and are subject to the terms of such third-party at its sole discretion. Furthermore, you acknowledge and agree that nothing herein is a grant of license to (i) the third-party products or services; (ii) any products, processes or technology described in or offered by the third-party products or services; or (iii) any copyright, trademark, patent or other intellectual property right in the third-party products or services. We disclaim any responsibility for any harm resulting with respect to viewing or using of any third-party content or third-party products or services. Things You Cannot Do.

Give false or misleading information to us or anyone else in connection with your use of the Site or the Services, including giving false information in your account registration. You are entirely responsible for all content that you upload, post or otherwise transmit via the Site.
Upload, post or otherwise transmit via the Site any content that: (i) is harmful, obscene, indecent, pornographic, defamatory, racist, violent, offensive, threatening, harassing, or otherwise objectionable to Evolution or other users of the Site; (ii) includes unauthorized disclosure of personal information; (iii) violates or infringes anyone's intellectual property rights; or (iv) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. X1 reserves the right to edit or remove content that violates this Agreement.

Do anything that smacks of bad online citizenship, such as use our Services for spam or attempt to reverse engineer or hack into our systems.
Access or scrape the Site or the Services by any automated means unless you are a search engine crawling the Site for the sole purpose of creating a publicly accessible search index; or bypass any technical protections or throttling that we institute.

Copy, modify, create derivative works from or distribute any content from the Site (whether the content has been posted by us or a third party); copy, display or use our trademarks in any way; or use the Site for any purpose not explicitly authorized in the Agreement.

Link to the Site using any HTML techniques that display the Site within a frame, partial window, popup, pop-under, or any other non-standard linking method, or present or redistribute content from the Services, except as provided authorized by X1.

Anything we ask you not to do.

Third Party Applications. Contractor through X1 may offer its Services utilizing application program interfaces available from other third party providers ("API"). Such APIs may also offer to display content provided by other third-party products and services (a) through APIs, "feeds" or other mechanisms provided by such third-party products and services, or (b) by accessing your accounts with such third-party products and services as authorized by you during your use of the Services ("User Content"). As to User Content we access through the APIs, you hereby authorize X1 to access your account for the purpose of obtaining and using such User Content. The use of such APIs made available by third parties is subject to the terms and conditions provided by those providers for application developers such as X1. We make no representations or warranties regarding the performance of such third-party services, their compliance with applicable laws and regulations, or any other aspect of such third-party services. Your use of third-party services is at your own risk. You acknowledge and agree that the third-party services and any related third-party terms of service are subject to change by the applicable third-party at its sole discretion and without any notice.

Third Party Trademarks and Content. Use of any third party trademark or third party content on the Site does not constitute affiliation with or endorsement of these third parties. Aside from any explicit grants in the Agreement, nothing in the Agreement grants you any license to third party trademarks or content. All trademarks are the property of their respective owners.

X1’s Rights. X1 retains all right, title and interest in the Site and the Services, including all technology and processes, enhancements or modifications thereto, trademarks, service marks, logos, site design, text, graphics, logos, images and icons, as well as the arrangement thereof. You agree that the Services contain proprietary content, information and material that is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information, or materials in any way whatsoever except for permitted uses of the Services. Except for rights expressly granted in the Agreement, nothing in the Agreement grants you any right, title or license. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or licensee.

X1 PROVIDES THIS SITE AND THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED, OR STATUTORY. X1 SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND NON-INFRINGEMENT. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THIS SITE AND SERVICES. X1 MAKES NO WARRANTY THAT THE SITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. X1 DOES NOT MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SITE OR THE SERVICES OR THAT ANY DEFECTS WILL BE CORRECTED. X1 MAKES NO WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SITE OR THE SERVICES OR THAT ANY DEFECTS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM X1 SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. THIS DISCLAIMER IS MADE TO THE FULLEST EXTENT PERMITTED BY LAW. SOME STATES AND COUNTRIES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Xirrus ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. § 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 522.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**XIRRUS LICENSE, WARRANTY AND SUPPORT TERMS**

Attachment A - Xirrus

Software License and Warranty Agreement

1.0 **DEFINITIONS**
1.1 “Documentation” means the user manuals and all other all documentation, instructions or other similar materials in whatever media or format as provided or made available by Xirrus accompanying or associated with the Software covering the installation, application, and use thereof.

1.2 “Licensor” means XIRRUS and its suppliers.

1.3 “Product” means an access point or high density access point containing one or more distinct radios.

1.4 “Software” means, collectively, each of the application and embedded software programs delivered to Ordering Activity in connection with this Agreement. For purposes of this Agreement, the term Software shall be deemed to include any and all Documentation and Updates provided with or for the Software.

1.5 “Updates” means any bug.fix, maintenance or version release to the Software that may be provided to Ordering Activity from Licensor pursuant to this Agreement or pursuant to any separate maintenance and support agreement entered into by and between Licensor and Ordering Activity.

2.0 GRANT OF RIGHTS

2.1 Software. Subject to the terms and conditions of this Agreement and the applicable ordering document (Purchase Order), together with the underlying GSA Schedule Contract and Schedule Pricelist, Licensor hereby grants to Ordering Activity a perpetual, non-exclusive, non-sub licenseable, non-transferable right and license to use the Software solely as installed on the Product in accordance with the accompanying Documentation and for no other purpose.

2.2 Ownership. The license granted under Sections 2.1 above with respect to the Software does not constitute a transfer or sale of Licensor's or its suppliers' ownership interest in or to the Software, which is solely licensed to Ordering Activity. The Software is protected by both national and international intellectual property laws and treaties. Except for the express licenses granted to the Software, Licensor and its suppliers retain all rights, title and interest in and to the Software, including (i) any and all trade secrets, copyrights, patents and other proprietary rights therein or thereto or (ii) any Marks (as defined in Section 2.3 below) used in connection therewith. In no event shall Ordering Activity remove, efface or otherwise obscure any Marks contained on or in the Software. All rights and licenses not expressly granted herein are reserved by Licensor.

2.3 Copies. Ordering Activity shall not make any copies of the Software but shall be permitted to make a reasonable number of copies of the related Documentation. Whenever Ordering Activity copies or reproduces all or any part of the Documentation, Ordering Activity shall reproduce and not efface alter, or remove any titles, trademark symbols, copyright symbols and legends, and other proprietary markings or similar indicia of origin (“Marks”) on or in the Documentation.

2.4 Restrictions. Ordering Activity shall not itself, or through any parent, subsidiary, affiliate, agent or other third party (i) sell, rent, lease, license, sublicense, assign or otherwise transfer the Software, or any of Ordering Activity's rights and obligations under this Agreement except as expressly permitted herein; (ii) decompile, disassemble, or reverse engineer the Software, in whole or in part; (iii) allow access to the Software by any user other than by Ordering Activity's employees and contractors who are bound in writing to confidentiality and non-use restrictions at least as protective as those set forth herein; (iv) except as expressly set forth herein, write or develop any derivative software or any other software program based upon the Software; (v) use any computer software or hardware which is designated to defeat any copy protection or other use limiting device, including any device intended to limit the number of users or devices accessing the Product; (vi) disclose information about the performance or operation of the Product or Software to any third party without the prior written consent of Licensor; or (vii) engage a third party to perform benchmark or functionality testing of the Product or Software.

3.0 LIMITED WARRANTY AND LIMITATION OF LIABILITY

3.1 Limited Warranty & Exclusions. Licensor warrants that the Software will perform in substantial accordance with the specifications therefore set forth in the Documentation for a period of ninety [90] days after Ordering Activity’s acceptance of the terms of this Agreement with respect to the Software ("Warranty Period"). If during the Warranty Period the Software does not perform as warranted, Licensor shall, at its option, correct the relevant Product and/or Software giving rise to such breach of performance or replace such Product and/or Software free of charge. THE FOREGOING ARE ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF OR NONCOMPLIANCE WITH THE FOREGOING WARRANTY. THE WARRANTY SET FORTH ABOVE IS MADE TO AND FOR THE BENEFIT OF ORDERING ACTIVITY ONLY. The warranty will apply only if (i) the Software has been used at all times and in accordance with the instructions for use set forth in the Documentation and this Agreement; (ii) no modification, alteration or addition has been made to the Software by persons other than Licensor or Licensor's authorized representative; and (iii) the Software or Product on which the Software is installed has not been subject to any unusual electrical charge.

3.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 3, ALL ADDITIONAL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, AGAINST INFRINGEMENT OF ANY FORM OR NATURE OF INTELLECTUAL PROPERTY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY DISCLAIMED BY LICENSOR AND ITS SUPPLIERS. THIS DISCLAIMER SHALL APPLY EVEN IF ANY EXPRESS WARRANTY AND LIMITED REMEDY OFFERED BY LICENSOR FAILS OF ITS ESSENTIAL PURPOSE.

3.4 HAZARDOUS APPLICATIONS. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF A NUCLEAR FACILITY, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROLS OR OTHER DEVICES OR SYSTEMS IN WHICH A MALFUNCTION OF THE SOFTWARE WOULD RESULT IN FORSEEABLE RISK OF INJURY OR DEATH TO THE OPERATOR OF THE DEVICE OR SYSTEM OR TO OTHERS ("HAZARDOUS APPLICATIONS"). ORDERING ACTIVITY ASSUMES ANY AND ALL RISKS, INJURIES, LOSSES, CLAIMS AND ANY OTHER LIABILITIES ARISING OUT OF THE USE OF THE SOFTWARE IN ANY HAZARDOUS APPLICATIONS.

THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

3.5 Reserved.

4.0 RESERVED
5.0 RESERVED

6. COMMERCIAL COMPUTER SOFTWARE
The Software and Documentation furnished and licensed under and pursuant to this Agreement are a “commercial item”, and is “commercial computer software” and “commercial computer software documentation” as those terms are defined and used in applicable U.S. federal government and comparable U.S. department and agency acquisition statutes and regulations. If Ordering Activity is the U.S. government or a department or agency thereof, Ordering Activity shall only acquire the rights and licenses as are contained in this Agreement, unless otherwise expressly agreed to in writing by Licensor in a separate written addendum to this Agreement. 7. MISCELLANEOUS
During the course of use of the Software, Licensor may collect information on your use thereof; you hereby authorize Licensor to use such information to improve its products and services, and to disclose the same to third parties provided it does not contain any personally identifiable information. Ordering Activity may not export or re-export the Software or Documentation (or other materials) without appropriate United States government licenses or in violation of the United States’ Export Administration Act and Ordering Activity shall comply with all national laws governing the Software.

LIMITED HARDWARE WARRANTY
Xirrus warrants that for the lifetime of the product (Xirrus Access Points) or a period of five years (Xirrus Arrays) or one year (all other Xirrus hardware products) from the date of purchase by the original purchaser (“Ordering Activity”): (i) the Xirrus Equipment (“Equipment”) will be free of defects in materials and workmanship under normal use; and (ii) the Equipment substantially conforms to its published specifications. Except for the foregoing, the Equipment is provided AS IS. This limited warranty extends only to Ordering Activity as the original purchaser. Ordering Activity’s exclusive remedy and the entire liability of Xirrus and its suppliers under this limited warranty will be, at Xirrus’ option, repair, replacement, or refund of the Equipment if reported (or, upon request, returned) to the party supplying the Equipment to Ordering Activity. In no event does Xirrus warrant that the Equipment is error free or that Ordering Activity will be able to operate the Equipment without problems or interruptions.

This warranty does not apply if the Equipment (a) has been altered, except by Xirrus, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Xirrus, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra-hazardous activities.

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

IN NO EVENT WILL XIRRUS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE EQUIPMENT EVEN IF XIRRUS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Ordering Activity agrees the Equipment and related documentation shall not be used in life support systems, human implantation, nuclear facilities or systems, or any other application where failure could lead to a loss of life or catastrophic property damage or cause or permit any third party to do any of the foregoing.

Equipment including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Ordering Activity agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Equipment.
1. **Scope.** This Rider and the attached Yubico Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

YUBICO LICENSE, WARRANTY AND SUPPORT TERMS

The terms & conditions of this Attachment shall be incorporated into each contract between Yubico and Ordering Activity for the purchase and sale of the Product, and shall govern each such purchase and sale and the use of the Product and Service.

As used herein, “Yubico” means the Yubico entity, Yubico, Inc., that supplied the Product to Ordering Activity, “Product” means YubiKey or YubiHSM, as applicable, and “Service” means the YubiCloud one-time password validation service.

A. Limited Warranty. Yubico warrants that the Product will be free from defects in material and workmanship for a period of one (1) year from the date of delivery to the original purchaser (the “Warranty Period”). If a defect in material or workmanship arises within the Product during the Warranty Period and the Product is returned to Yubico within the Warranty Period, Yubico will, at its sole option and subject to applicable laws: (a) repair or replace any defective Product with a new or refurbished product; or (b) refund the original purchase price of the Product. The Warranty Period for any repaired or replacement Product will persist for the longer of the remainder of the original one (1) year Warranty Period or ninety (90) days from the date the repaired or replacement product is shipped to the user. This Paragraph A sets forth Yubico’s sole obligation and Ordering Activity’s sole remedy for any breach of the Limited Warranty.

B. Restrictions. The Limited Warranty extends only to the original purchaser of the Product and is non-transferrable. The Limited Warranty does NOT apply to a Product that: (a) is altered or modified, other than by Yubico; (b) is not maintained in a normal and customary fashion or is operated outside of Yubico’s recommended guidelines; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; (d) has had its original serial number altered or removed, other than as a result of normal wear and tear; or (e) Yubico has provided free of charge. In no event does Yubico warrant that the Product is error free, will operate properly or at all in all computer environments and configurations, or that Ordering Activity will be able to operate the Product without problems or interruptions. Yubico does not warrant that the Product or any equipment, system or network on which the Product is used will be free of vulnerability to intrusion or attack.

C. Grant of License. The Product may contain certain object code software deployed onto its secure hardware prior to delivery to the user ("Firmware") and/or provided separately for use with the Product ("Driver Code") (collectively, "Software"). Yubico grants Ordering Activity a personal, nonexclusive, non-sublicensable, non-assignable and non-transferable license to use the Software solely as part of Ordering Activity’s use of the Product and in accordance with the terms and conditions of this Attachment. Ordering Activity may use the Firmware only as originally deployed onto the Product. Ordering Activity may not separate the Firmware from the remainder of Product or use the Software on another device. Ordering Activity may not distribute, license, sell, rent, or otherwise provide the Software to third parties. Ordering Activity acknowledges that the Software may have bugs or security vulnerabilities and that in no event does Yubico warrant that the Software is error-free or that the Software or the Product as a whole is free of all possible security vulnerabilities.

D. Rights Protection. The Software is licensed not sold. All title to the Software and other Yubico intellectual property rights related to the Software such as, but not limited to, copyright, trade secrets, patents, trademarks and service marks, shall at all times remain with Yubico and its licensors as applicable. Ordering Activity agrees that the techniques, ideas, algorithms, design, concepts, code, and processes contained or enabled in the Product constitute Yubico’s intellectual property rights and are subject to confidentiality protection. As such, Ordering Activity agrees not to reverse engineer, disassemble or decompile, or otherwise attempt to derive the source code for, or perform cryptographic analysis upon, the Product to the extent this restriction is permitted by law.

E. Compliance with Laws. In connection with the use and transport of the Product, including the Software, Ordering Activity shall comply with all applicable export, import, and other relevant laws. Determination of the applicable law is Ordering Activity’s responsibility. Ordering Activity acknowledges and understand that the Product, including the Software, is cryptographic in nature and that it therefore is highly regulated. Ordering Activity is strictly prohibited from exporting, reexporting or importing the Product and/or Software, regardless of method, without first complying with all applicable government use, import, and export laws, rules, regulations, and orders, and obtaining any necessary approvals or permits. Obtaining any necessary export or import approval for the Product is Ordering Activity’s responsibility.

F. Warranty Disclaimer. THE SERVICE IS PROVIDED FREE OF CHARGE AND “AS IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER. WITH RESPECT TO THE PRODUCT, INCLUDING THE SOFTWARE, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THE APPLICABLE EXPRESS LIMITED WARRANTY. ALL OTHER STATUTORY AND IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, ARE DISCLAIMED. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Ordering Activity. The Limited Warranty gives Ordering Activity specific legal rights, and Ordering Activity may also have other rights which vary by jurisdiction.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL YUBICO OR ITS AFFILIATES BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED OR CONTRIBUTED TO BY ANY USE OF THE PRODUCT OR ANY SOFTWARE THEREIN OR THEREOF, FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOST DATA OR INCOME, OR UNAUTHORIZED ACCESS TO COMPUTER SYSTEMS, DATA OR OTHER INFORMATION.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, YUBICO PROVIDES THE PRODUCT “AS IS.” BY USING THE PRODUCT, THE USER ASSUMES ALL RESPONSIBILITY FOR AND RISK OF USE OF THE PRODUCT. WITHOUT LIMITING THE SCOPE OF THE FOREGOING, YUBICO DOES NOT WARRANT THAT THE PRODUCT OR THE SERVICE WILL FUNCTION WITHOUT DEFECTS OR THAT THE PRODUCT OR THE SERVICE IS OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL MECHANISMS OR THAT ALL PROGRAMMING ERRORS CAN BE FOUND IN ORDER TO BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND CONSISTENT WITH THIS ATTACHMENT, YUBICO DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, ERRORS, OMISSIONS, COMPLETENESS, OR USEFULNESS OF THE PRODUCT, THE SERVICE, AND ANY SOFTWARE, PROCEDURE, METHOD, APPARATUS, TECHNICAL SUPPORT OR PROCESS PROVIDED TO ORDERING ACTIVITY IN ASSOCIATION WITH THIS ATTACHMENT. YUBICO, ITS AFFILIATES, LICENSORS, EMPLOYEES, DISTRIBUTORS AND RESELLERS DO NOT ASSUME ANY RESPONSIBILITY FOR LOSS OR DAMAGES RESULTING FROM THE USE OF THE PRODUCT, THE SERVICE OR ANY INFORMATION CONTAINED IN ANY DOCUMENTATION PROVIDED TO USER.

This AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR

ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT is by and between the Ordering Activity under the GSA Schedule ("Ordering Activity" or "Customer"), and Yubico, Inc., a Delaware corporation having a place of business at 530 Lytton Avenue, Suite 301, Palo Alto, CA 94301 ("Yubico"). In this Agreement, "Party" means, individually, Customer or Yubico as the context requires and "Parties" means, collectively, Customer and Yubico.

BACKGROUND OF THE AGREEMENT

A. Customer has entered into or is currently entering into an agreement(s) with Yubico: (i) for the purchase of YubiKey and/or YubiHSM products; and/or (ii) to license Yubico’s Software (as defined below);
B. Customer desires Yubico to provide it with enterprise-wide maintenance and support services for the YubiKey, YubiHSM and/or Software products that it has or will acquire from Yubico;
C. Customer may obtain maintenance and support services for additional YubiKey, YubiHSM and/or Software products by entering into one or more additional Order Schedules; such additional Order Schedules shall be subject to and become part of this Agreement; and
D. Yubico is willing to provide Customer with maintenance and support services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS A

1.1. "Agreement" means this Enterprise Maintenance and Support Services Agreement, including all attached exhibits and Order Schedules that reference this Agreement.
1.2. "Customer Support Contact(s)" means individuals designated by Customer who are trained on the use of the Product and/or Software and authorized by Yubico to report Problems to Yubico Support Contacts. Customer Support Contacts, and their contact information, are listed on one or more Order Schedules.
1.3. "Documentation" means Yubico’s written materials which it makes accessible to customers and potential customers describing the technical features and functions of the Software and/or Product.
1.4. "End User" means Customer’s employees and consultants authorized by Customer to use the Product and/or Software.
1.5. "Error" means any material error or defect in the Software that causes the Software not to substantially conform in all material respects with its Documentation.
1.6. "Error Corrections" means patches and bug fixes developed by Yubico to correct Errors.
1.7. "Order Schedule" means a purchase order issued by Customer and accepted by Yubico, for the Product Maintenance Services and Software Support Services described in this Agreement.
1.8. "Problem" means a problem or error encountered in the reasonable and authorized use of the Software or Product that (i) degrades the performance of the Software or Product as compared to Yubico’s Documentation applicable to such Software or Product, or (ii) renders one or more features of the Software or Product wholly or partly inoperable.
1.9. "Problem Report" means a reasonable description of a Problem encountered by Customer or its End Users, including: the End User who encountered the Problem, the date and time the Problem was encountered, the operating environment the problem occurred in, the functions the End User was attempting, the steps taken by the Customer Support Contact to resolve the problem prior to submitting a Problem Report and a reproducible test case.
1.10. "Product" means the YubiKey or YubiHSM, as applicable.
1.11. "Severity 1 Problem" means multiple users cannot access software of critical importance to the Customer’s business with no possible Workaround or a failure with multiple users affected per site, multiple sites affected and no possible Workaround. The resulting situation is critical to the operation of the Customer’s business.
1.12. "Severity 2 Problem" means multiple users cannot access software of high importance to the Customer’s business with no practical or easily implementable Workaround or a failure which affects several users in a single site. The resulting situation has moderate impact on the operation of the Customer’s business.
1.13. "Severity 3 Problem" means multiple users cannot access software of low importance to the Customer’s business and a practical Workaround exists or a failure which affects a single user. The resulting situation as some minimal impact on the operation of the Customer’s business.
1.14. "Severity 4 Problem" includes requests for new or enhanced features, general questions relating to the Software or Product and all other Problems that are not Severity 1-3 Problems. The resulting situation does not affect the daily business of the Customer.
1.16. “Software” means one or more of Yubico’s: (i) YubiKey Smart Card Minidriver; (ii) Yubico PIV Tool; (iii) YubiKey PIV Manager; and (iv) YubiHSM Key Storage Provider (KSP).

1.17. “Updated Product” means a replacement Product designed to correct an identified critical security issue in an existing Product.

1.18. “Updates” means Error Corrections, minor enhancements and patches and other minor changes to the Software that are generally made available by Yubico to its Customers at no additional cost pursuant to Enterprise Maintenance and Support Services Agreements. Updates do not include enhancements to or new versions of Software that provide substantial new, enhanced or different features, functions or performance.

1.19. “Workaround” means a change in the procedures recommended by Yubico or data supplied by Customer to avoid a Problem without substantially impairing Customer’s use of the Software or Product.

1.20. “Yubico Support Contacts” are those individuals designated by Yubico to assist Customer with Problems. Customer Support Contacts shall communicate with Yubico Support Contacts in order to report and resolve a Problem. Contact information for the Yubico Support Contacts is listed in one or more Order Schedules.

2. PRODUCT MAINTENANCE SERVICES

2.1. Scope of Services. Product Maintenance Services comprise the provision of Updated Products when Yubico has become aware of a critical security vulnerability with a previous version of a Product that could materially adversely affect the security of Customer’s data. The determination of whether a critical security vulnerability exists that could materially adversely affect a Customer’s data shall be made by Yubico in its sole discretion.

2.2. Updated Products. Yubico will notify Customer when Updated Products are available that address a critical security vulnerability, and Yubico will provide such Updated Products to Customer without additional charge.

2.3. Prompt Replacement of Existing Products. Customer agrees to use commercially reasonable efforts to promptly replace the compromised existing Products with the Upgraded Products and provide evidence of the destruction of the compromised Products to Yubico if requested.

3. SOFTWARE SUPPORT SERVICES.

3.1. Scope of Services. Software Support Services comprise the following services:

a. The provision of Updates as such Updates become available; and

b. Depending upon the Service Level selected and purchased by Customer, Yubico will work to correct Problems with the Software by e-mail, telephone or electronically from Yubico’s remote support center, or provide onsite support for an additional fee in accordance with the GSA pricelist.

3.2. Updates. As permanent solutions are developed for known Errors in the Software, they will be incorporated from time to time in planned Updates. Yubico will provide Customer, free of additional charge, with such Updates as they are released. Yubico will provide documentation that Yubico considers reasonably necessary to assist in a smooth transition for mitigating the errors. In the event Yubico decides in its sole discretion to update the associated Documentation, Yubico will provide a copy of the same to Customer at no additional charge.

3.3. Installation of Updates. All Updates will be made available to Customer electronically via secure download from Yubico’s designated site. Customer agrees to use commercially reasonable efforts to promptly download and install all Updates supplied hereunder in order to maintain the Software at the most current revision level. Yubico is obligated hereunder to provide Software Support Services only (i) for the current revision level of the Software, and (ii) for the pre-updated version of the Software for six (6) months following the release of an Update. Customer is solely responsible for all costs of installation of Updates.

4. PROBLEM REPORTING

4.1. Customer Obligations. Prior to submitting a Problem Report, Customer shall make all reasonable efforts to resolve the Problem without assistance from Yubico. Customer Support Contacts shall attempt to reproduce any problems reported to them by Customer’s End Users and only report reproducible Problems to Yubico. For Problems that Customer is unable to resolve itself, Customer Support Contacts shall report the Problem to Yubico by submitting a Problem Report to Customer’s designated Yubico Support Contact. Customer Support Contacts and Yubico Support Contacts will be set forth in the applicable Order Schedule. All communications concerning Problem identification and resolution shall occur between Customer Support Contacts and Yubico Support Contacts. Valid Problem Reports must be submitted to Yubico in English or languages on Yubico’s Supported Languages List, which will be made available upon request.

4.2. Problem Resolution. Yubico shall address reported Problems in accordance with the severity level assigned to such Problem by Yubico, the Service Level selected and paid for by Customer, and as otherwise set forth in Exhibit B (“Technical Response Schedule”) attached hereto. Yubico shall exert good faith, commercially reasonable efforts to achieve the response times set forth in Exhibit B. However, Customer acknowledges and agrees that Yubico may not be able to achieve the response times set forth in Exhibit B at all times and under all circumstances.
5. EXCLUSION FROM PRODUCT MAINTENANCE AND SOFTWARE SUPPORT SERVICES

5.1. **Customer Errors.** Yubico will have no obligation of any kind to provide Product Maintenance Services or Software Support Services of any kind for problems in the operation or performance of Products or Software to the extent caused by any of the following (each, a "Customer-Generated Error"): (a) non-Yubico software or hardware products or use of the Software or Product in conjunction therewith; (b) modifications to the Software or Product made by any party other than Yubico without Yubico’s express prior written authorization; (c) Customer’s use of the Software or Product other than in a reasonable manner and as authorized by Yubico; and (d) Customer’s use of other than the most current Product and the most current version of the Software or any Error Corrections or Updates provided by Yubico (or pre-updated version of the Software for six (6) months following the release of an Update).

6. FEES

6.1. **Maintenance and Support Services Fees.** Customer will pay Yubico the total fees for all Services ("Service Fees") as specified in all accepted Order Schedules, in accordance with the GSA pricelist. For clarity, if Customer chooses to purchase Services then Customer must select a single level of Service (i.e., Gold or Silver) for all of the Products and Software it has acquired. Yubico cannot provide Services for only a subset of Customer’s Products and Software, nor can Yubico provide Customer with different service levels for different Products and Software.

7. WARRANTY AND DISCLAIMER OF WARRANTIES

7.1. **Updated Product Warranty.** Updated Products are warranted under the original Product warranty and, accordingly, the warranty for any Updated Product shall persist for the longer of the remaining period of the original one (1) year Product warranty or ninety (90) days from the date Yubico ships the Updated Product to Customer.

7.2. **Software Support Services Warranty.** Yubico warrants that the Software Support Services will be performed in a workmanlike manner by qualified personnel familiar with the Software and its operations. This warranty will be in effect for a period of thirty (30) days from completion of Yubico’s performance of the affected Software Support Service.

7.3. **Sole Remedy.** As Customer’s sole and exclusive remedy and Yubico’s entire liability for any breach of the warranty set forth in Section 7.2 regarding Yubico’s provision of Software Support Services, Yubico will, at its option: (a) promptly re-perform the service in an attempt to correct any Errors; or (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund to Customer an equitable portion of the fees paid if the Problem cannot be resolved.

7.4. **Disclaimer.** Yubico does not warrant that the Updated Products, Updates, Error Corrections, Workarounds and Services provided pursuant to this Agreement will meet Customer’s requirements, or that the Updated Products, Updates, Error Corrections and Workarounds will work in the combinations that Customer may select, or that the operation of the Updated Products, Updates, Error Corrections, Workarounds and Services will be error-free or that all errors in the Products and/or Software will be corrected. Yubico will have no obligation or liability for any Customer-Generated Errors.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, (I) ALL UPDATED PRODUCTS ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE ORIGINAL PRODUCTS THAT ARE REPLACED BY THE UPDATED PRODUCTS, AND (II) ALL UPDATES ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE SOFTWARE MODIFIED OR REPLACED BY THE UPDATES.

BY USING THE UPDATED PRODUCTS, UPDATES, ERROR CORRECTIONS, WORKAROUNDS AND THE SERVICE, CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM SUCH USE, INCLUDING WITHOUT LIMITATION LOSS OR CORRUPTION OF DATA OR SOFTWARE PROGRAMS, OR UNAUTHORIZED ACCESS TO DATA, SOFTWARE PROGRAMS AND/OR COMPUTER SYSTEMS.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM YUBICO OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YUBICO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

8. RESERVED

9. TERM AND TERMINATION

9.1. **Term.** The initial term ("Initial Term") of this Agreement is from the date of shipment and for 12 months as set forth in the applicable Order Schedule.

9.2. **Reinstating Expired or Terminated Agreement.** Once expired or terminated, Customer may only reinstate this Agreement upon payment of the then-applicable GSA Service Fees, plus an additional amount equivalent to the Service Fees that would have been due for the period of time from the termination or expiration date of the Agreement until the date the Agreement is reinstated.

9.3. **Survival.** Sections 1, 6.1, 7, 9.2, 10 and this Section 9.3 will survive any termination or expiration of this Agreement.
10. GENERAL

10.1. Assignment. This Agreement is not assignable or transferable by either Party, in whole or in part, by operation of law or otherwise, without the other Party’s express prior written consent, which consent may be withheld for any reason. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors, assignees and transferees.

10.2. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the Federal laws of the United States. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

10.3. Nonexclusive Remedy. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

10.4. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

10.5. Waiver. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

10.6. Export Control. Customer agrees to comply fully with all relevant export laws and regulations of the United States and other countries (“Export Laws”) to ensure that the Software, Updated Product, Updates, Workarounds and Error Corrections, or any direct or derivative products thereof, are not: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

10.7. Entire Agreement. This Agreement, including the attached Exhibits, the underlying GSA Schedule Contract, Schedule Pricelist, and all accepted Order Schedules constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties.

Yubico Support Contacts:
E-mail: enterprise-support@yubico.com
Web: yubi.co/support
Phone: 1-(844) 876-5300
## EXHIBIT B

### TECHNICAL RESPONSE SCHEDULE

### SILVER AND GOLD SUPPORT SERVICES.

<table>
<thead>
<tr>
<th>Service Components</th>
<th>Silver Support Services</th>
<th>Gold Support Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hours of Coverage</strong></td>
<td>Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time)</td>
<td>24 hours per day, 7 days per week, 365 days per year for Severity 1 problems. Business hours: Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time) Severity 2 – 4.</td>
</tr>
<tr>
<td><strong>Problem Reporting</strong></td>
<td>E-mail Problem Reporting only. If e-mail report of a Problem is sent outside of the hours of coverage, then it will be deemed to be received by Yubico Support Contacts upon the next start of the Hours of Coverage.</td>
<td>Unlimited Problem Reporting, seven (7) days a week, twenty-four (24) hours a day web and toll free telephone access to at least one Yubico Support Contact.</td>
</tr>
</tbody>
</table>

**Response Targets**
<table>
<thead>
<tr>
<th>Severity 1 Problem</th>
<th>Response time: One (1) business day.</th>
<th>Response time: One (1) hour. A Severity 1 Problem requires you to have dedicated resources available to work on the issue with Yubico on an ongoing basis during your contractual hours, as required. Severity 1 Problems will have priority over Severity 2 - 4 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 2 Problem</td>
<td>Response time: One (1) business day. Severity 1 Problems will have priority over Severity 2 Problems.</td>
<td>Response time: Eight (8) business hours. Severity 1 Problems will have priority over Severity 2 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services customers.</td>
</tr>
<tr>
<td>Severity 3 Problem</td>
<td><strong>Response time</strong>: Three (3) business days. &lt;br&gt;Severity 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems.</td>
<td><strong>Response time</strong>: One (1) business day. &lt;br&gt;Severity 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems.</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Severity 4 Problem</td>
<td><strong>Response time</strong>: Five (5) business day. &lt;br&gt;All other Problems will have priority over Severity 4 Problems.</td>
<td><strong>Response time</strong>: Three (3) business days. &lt;br&gt;All other Problems will have priority over Severity 4 Problems.</td>
</tr>
</tbody>
</table>
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached ZeroFox, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ZEROFOX, INC.

1. ORDER FORMS.
Subject to the terms and conditions of this Agreement, ZeroFOX agrees to sell the Services that are identified in a mutually executed Purchase Order.
Upon mutual execution of the Purchase Order, this agreement shall be considered an integral part of this Agreement.

2. USE OF APPLICATION SERVICES.

2.1 Right to Use Application Services.

(a) ZeroFOX agrees to provide access to Application Services within the scope of the Access Rights purchased by Ordering Activity pursuant to a mutually executed Purchase Order. Ordering Activity acknowledges that the Access Rights may be used only by Ordering Activity’s Authorized End Users for Ordering Activity’s internal business purposes, and only during the Access Term.

(b) Ordering Activity acknowledges (i) that it is responsible for procuring and operating all computer systems, software, and telecommunications services required to meet the minimum technical specifications necessary for Ordering Activity’s Authorized End Users to access and use the Application Services, and Ordering Activity may be unable to access or utilize some or all aspects of the Application Services unless such minimum technical specifications are met, and (ii) nothing in this Agreement may be interpreted as an implied license or to require ZeroFOX to deliver a copy of any software or other product used by ZeroFOX to provide the Application Services.

2.2 Authorized End Users. Ordering Activity shall be fully responsible for compliance with this Agreement by, as well as the acts and omissions of, all users who access the Application Services under its Authorized End User login credentials. Ordering Activity shall not authorize access to or permit use of the Application Services by persons other than Authorized End Users. ZeroFOX will issue to Ordering Activity the number of unique sets of login credentials (each consisting of a user name and password) set forth on the applicable Purchase Order for the Application Services and, unless otherwise approved in writing by ZeroFOX in its sole discretion, Ordering Activity will ensure that no more than one Authorized End User will have access to or will use each set of login credentials.

2.3 Documentation License. Subject to the terms and conditions of the Purchase Order, ZeroFOX hereby grants to Ordering Activity a nonexclusive, non-transferable, non-sublicensable right and license during the Term to reproduce copies of the Documentation solely for use by Ordering Activity in connection with the exercise of rights granted in this Agreement. Ordering Activity acknowledges that no right is granted to distribute, publish, modify, adapt, translate or create derivative works of the Documentation. Ordering Activity acknowledges that the Documentation is ZeroFOX’s Confidential Information, and hereby agrees to accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices, that are contained within any copies of the Documentation. ZeroFOX recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

3. RESERVATION OF RIGHTS AND RESTRICTIONS.

3.1 Proprietary Rights; No Implied Licenses. Ordering Activity acknowledges that, as between the Parties, ZeroFOX owns all Intellectual Property Rights and other proprietary interests that are embodied in, or practiced by, the Application Services, the ZeroFOX Products and Platform, and the Documentation. To be clear, however, the preceding sentence does not constitute a representation or warranty regarding ownership of any intellectual property rights or other proprietary interests.

3.2 Compliance with Laws. Ordering Activity represents and warrants that it shall use the Application Services and Reports only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing authorities, including without limitation the National Labor Relations Act, the Family Medical Leave Act, the Stored Communications Act, the Computer Fraud and Abuse Act and any federal, state or local laws regarding employee privacy, off-duty conduct or discrimination.

3.3 General Restrictions on Use. Ordering Activity agrees not to act outside the scope of the rights that are expressly granted by ZeroFOX in this Agreement. Ordering Activity will not (a) make the Application Services available to anyone other than Ordering Activity and its Authorized End Users; (b) sell, resell, license, sublicense, rent, lease or distribute the Application Services or any Reports, or include any Application Services or Reports or any derivative works thereof in a service bureau or outsourcing offering; (c) copy, modify or make derivative works based upon the Application Services; (d) “frame” or “mirror” any Reports contained in, or accessible from, the Application Services on any other website, server, wireless or Internet-based device; or (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component underlying the Application Services is compiled or interpreted; and Ordering Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Ordering Activity any right to obtain or use such source code. Ordering Activity acknowledges and agrees that compliance with the restrictions set forth in this Article 3 is an essential basis of this Agreement.

4. TREATMENT OF CONTENT.

4.1 Selection of Ordering Activity Content and Third Party Content. Ordering Activity understands that the Application Services are capable of processing Ordering Activity Content that is uploaded by Ordering Activity to ZeroFOX’s servers. Ordering Activity further understands that the Application Services may include features that enable Ordering Activity to specify Third Party Content to be retrieved via the Application Services, including all Ordering Activity Content and Third Party Content. ZeroFOX shall have no obligation to preview, verify, modify, filter or remove any Third Party Content (although ZeroFOX may do so in its sole discretion), and ZeroFOX shall not be responsible for any failure to remove, or for any delay in removing, harmful, inaccurate, unlawful or otherwise objectionable Third Party Content.

4.2 Rights in Content.

(a) Ordering Activity Content. Ordering Activity hereby grants to ZeroFOX a non-exclusive license to use, store, process, analyze and display in Reports all Ordering Activity Content during the Term for the limited purposes of performing ZeroFOX’s obligations under this Agreement. Prior to uploading Ordering Activity Content, Ordering Activity should, at its own expense, obtain all licenses, consents or other permissions from appropriate third parties as may be necessary for Ordering Activity’s use of the relevant Ordering Activity Content as necessary to enable Ordering Activity to grant the rights granted by this Section 4.2.

(b) Third Party Content. Ordering Activity acknowledges that the Content may contain or be accompanied by third-party software, data or other materials that are subject to and provided in accordance with terms that are in addition to or different from the terms set forth in this Agreement.

(c) Employee Generated Content. Ordering Activity acknowledges that Ordering Activity’s collection, monitoring and use of such content may be restricted by federal and state employment laws. Ordering Activity shall, at its own expense, obtain all consents or permissions required to lawfully use employee-generated content as contemplated by this Agreement and Ordering Activity shall only use such content in compliance with applicable law.

4.3 Content Disclaimers.

(a) ZeroFOX shall have no obligation to preview, verify, modify, filter or remove any Third Party Content (although ZeroFOX may do so in its sole discretion), and ZeroFOX shall not be responsible for any failure to remove, or for any delay in removing, harmful, inaccurate, unlawful or otherwise objectionable Third Party Content.

(b) Ordering Activity acknowledges that, as between the Parties, Ordering Activity is responsible for backup and archiving of any content processed by the Application Services, including all Ordering Activity Content and Third Party Content. ZeroFOX shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Content or Third Party Content.
Ordering Activity acknowledges that, in the event the relevant third party provider of any particular Third Party Content ceases to make the same available for use as contemplated in this Agreement on terms acceptable to ZeroFOX, ZeroFOX shall have the right to discontinue provision of any tools to retrieve or access such Third Party Content, and/or may discontinue the processing, analysis, storage or provision of access to any such Third Party Content, without any obligation to any such Third Party Content, without any obligation to refund, credit, or other compensation, other than a refund of the unearned portion of any fee that was paid to ZeroFOX, if any, for actually supplying the access to such Third Party Content.

ZeroFOX does not provide any warranty or support under this Agreement for any non-ZeroFOX products or services, including without limitation, Ordering Activity Content and/or Third Party Content.

4.4 Appointment as Agent. Ordering Activity acknowledges and agrees that in order to provide certain features of the Application Services, ZeroFOX may need to access and collect certain information from Social Media Sites on Ordering Activity’s behalf and contact the owners of such sites for social risk management matters. As such, during the Access Term, Ordering Activity hereby appoints ZeroFOX as Ordering Activity’s agent to act on Ordering Activity’s behalf in order to gain access to Social Media Sites designated by Ordering Activity, for the sole purpose of assisting Ordering Activity in making requests, complaints or claims to such designated Social Media Sites related to protecting Ordering Activity’s Intellectual Property Rights (including without limitation claims of impersonation, privacy violations, and copyright or trademark violations), and only in accordance with Ordering Activity’s express instructions in each separate instance, which instructions shall be in writing or communicated to ZeroFOX through the applicable features of the Application Services (e.g., takedown request button/menu option). Ordering Activity represents and warrants that Ordering Activity has full right and authority to grant the licenses under this Section 4.4.

5. SUPPORT SERVICES.

5.1 Silver Support. During the Access Term, ZeroFOX agrees to provide the Silver Support Services, as set forth in Exhibit 2.

5.2 Platinum Support. If Ordering Activity elects to purchase Platinum Fully Managed Services pursuant to an Order Form, such services are subject to the ZeroFOX Platinum Fully Managed Services Agreement, which is incorporated herein as Exhibit 3.

6. PROFESSIONAL SERVICES; STATEMENTS OF WORK. Ordering Activity may request that ZeroFOX provide certain Professional Services related to Ordering Activity’s use of the Application Services. Any Professional Services to be provided will be included in a Purchase Order. ZeroFOX shall be under no obligation to perform Professional Services until a Purchase Order in relation thereto has been mutually executed.

7. RESERVED.

8. TERM AND TERMINATION.

8.1 Duration of Agreement. This Agreement will remain in effect for the term of service agreed upon in the Purchase Order.

8.2 Reserved.

8.3 Reserved.

8.4 General consequences of termination. Effective immediately upon expiration or termination of this Agreement, (i) Ordering Activity shall cease, and shall direct its users to cease, use of the Application Services, (ii) all licenses granted under this Agreement will become void, and (iii) neither Party will have continuing rights to use any Confidential Information of the other Party or to exercise any Intellectual Property Rights having been licensed under this Agreement. As soon as practicable after termination or expiration of this Agreement, each Party will discontinue its use and will return the Confidential Information and proprietary materials of the other Party.

8.5 Reserved.

9. RESERVED.

10. REPRESENTATIONS AND WARRANTIES.

10.1 Reserved.

10.2 Service Warranty. During the Term, the Application Service offerings will meet the Service Levels specified in Exhibit 1. If the applicable Application Service fails to achieve the Service Levels so specified, then Ordering Activity will be entitled, as its sole and exclusive remedy, to a credit for the applicable Service in accordance with the terms set forth in Exhibit 1, provided, however that Ordering Activity notifies ZeroFOX in writing of any such service failures within fifteen (15) days.

10.3 Ordering Activity Representations and Warranties. Ordering Activity represents and warrants that it will not, nor will it permit or authorize anyone else to, upload, post, store, view, transmit, distribute or otherwise publish any Ordering Activity Content that (i) is unlawful, fraudulent, . invasive of another’s privacy, or otherwise tortious.; (ii) violates or infringes the rights of third parties, including, but not limited to, Intellectual Property Rights, rights of privacy or publicity or any other proprietary rights; or (iii) contains any viruses, Trojan horses, worms, time bombs, cancelbots, or other harmful components that are intended to damage, detrimentally interfere with, surreptitiously intercept or misappropriate any system, data or personal information.

10.4 Disclaimers. EXCEPT AS OTHERWISE EXPRESSLY REPRESENTED OR WARRANTED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES, PROFESSIONAL SERVICES, THE DOCUMENTATION, AND ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZEROFOX ARE PROVIDED “AS IS”; AND ZEROFOX DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ZERFOX DOES NOT WARRANT THAT THE APPLICATION SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZEROFOX WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. NO WARRANTY IS MADE ON THE BASIS OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR TRADE USAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. RESERVED.

12. RESERVED.

13. GLOSSARY OF DEFINED WORDS AND PHRASES.

For purposes of this Agreement, certain capitalized words and phrases will have the meanings set forth or cross-referenced below.

“Access Rights” are contractual rights to access and use the Application Services according to the technical procedures and protocols established according to this Agreement. The scope of any particular Access Rights may be defined by the terms of the applicable Order Form, including the Access Term, number of Social Entities, Authorized Sources or other use restrictions.

“Access Term” shall have the meaning given such term in the Order Form.

“Application Services” means the limited online data processing and analysis functionality of the ZeroFOX Products and all related features ordered by Ordering Activity, operated by ZeroFOX and made available to Ordering Activity via the ZeroFOX Platform.

“Authorized End Users” are individual persons for whom Ordering Activity has purchased Access Rights, and may include only employees or agents of Ordering Activity who are acting on Ordering Activity’s behalf in the internal operation of Ordering Activity’s business.
“Authorized Sources” are the third-party websites or other online sources to the extent identified in an Order Form, from which content may be retrieved by Ordering Activity or at Ordering Activity’s direction using the automated tools within the Application Services. If no such sources are specifically identified, then subject to the obligations and restrictions set forth in Sections 4 and 10.3 of this Agreement and applicable laws any sources shall be deemed authorized.

“Confidential Information” means: any information or data (including information or data received by the disclosing party from a third party and as to which the disclosing party has confidentiality obligations) provided or disclosed by disclosing party or its agents to receiving party that is: (i) fixed in a tangible medium and marked as the confidential or proprietary information of the disclosing party; (ii) otherwise provided or disclosed by or on behalf of the disclosing party marked as proprietary at the time the information is provided; or (iii) not falling within any of the prior clauses of this sentence, but which, a reasonable person would conclude is of a confidential nature given the facts and circumstances of such disclosure or (iv) the ZeroFOX Products, the Application Services, the Services and the Documentation.

“Ordering Activity Content” means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity, including without limitation, any social media data, as well as any other data that is provided to ZeroFOX from Ordering Activity, that is uploaded, stored, analyzed and made available to and through the Application Services. “Documentation” means the documentation provided by ZeroFOX relating to the Application Services and/or the ZeroFOX Products.

“Intellectual Property Rights” are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

“Purchase Order” means a document signed by both Parties whereby the Ordering Activity orders one or more of the following: (i) access to the Application Services, (ii) Professional Services, or (iii) any other products or services to be offered by ZeroFOX pursuant to this Agreement.

“Platinum Fully Managed Services” means those support and monitoring services more fully described in the Platinum Fully Managed Services Agreement.

“Professional Services” means the installation, configuration and/or training services as specified in an Order Form.

“Reports” means any reports, summaries, analyses, data, information or other items of output, whether in textual or graphical form, produced by or derived from the Services, including any reports on or representations of the Ordering Activity Content, Third Party Content or other content after processing or transformation in any manner by or pursuant to the Services.

“Services” means collectively or individually, the Application Services, the Support Services and/or the Professional Services.

“Silver Support Services” means those application support services more fully described in Exhibit 2.

“Social Entities” means the social entities identified by Ordering Activity in an Order Form for monitoring by the Application Services, which may include any and all associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

“Social Media Sites” means a social media website owned or operated by a third party, including without limitation Twitter, Facebook and LinkedIn.

“Support Services” means, as applicable, the Silver Support Services or the Platinum Fully Managed Services.

“Term” has the meaning given such term in Section 8.1.

“Third Party Content” means all data, social media content, posts, blogs, surveys, ratings, reviews, feedback or any other information collected or otherwise obtained from any website, including content obtained through Social Media Sites.

“Use Restrictions” means any use restriction that is specifically agreed to in an Order Form, which may include maximum annual Ordering Activity Content, authorized sources or maximum through-put.

“ZeroFOX Products” means the object code version of ZeroFOX proprietary software applications including all updates, upgrades, bug fixes and components as identified on the applicable Order Form.

“ZeroFOX Platform” means the applications accessible at the URLs https://cloud.zerofox.com or https://recon.zerofox.com, as applicable.

EXHIBIT 1 SERVICE LEVEL AGREEMENT

This Exhibit sets forth Service Levels governing the contractual relationship between ZeroFOX and the Ordering Activity.

SERVICE LEVEL STANDARDS: The following defines service level standards for the Services:

<table>
<thead>
<tr>
<th>Service/Activity</th>
<th>Service Level</th>
<th>Service Level Credit</th>
<th>Service Level Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability of the Services</td>
<td>The Services will be available to users for normal use 98.00% of the time each month, not including scheduled downtime. Scheduled downtime shall be for regular maintenance and upgrades, and will be communicated with at least 24 hours of notice. Any downtime that might require more than 2 hours will be scheduled at least 7 days in advance.</td>
<td>5% of the recurring monthly fee for the Services for the month of the failure.</td>
<td>Credit to be remitted to Customer following the agreed upon dispute date</td>
</tr>
<tr>
<td>Restore Time</td>
<td>In the event of unscheduled downtime the system shall be restored to a fully operational state within 48 hours.</td>
<td>5% of the recurring monthly fee for the Services for the month of the failure.</td>
<td>Credit to be remitted to Customer following the agreed upon dispute date</td>
</tr>
</tbody>
</table>
EXHIBIT 2 SILVER SUPPORT SERVICES AGREEMENT

1. This Silver Support Services Agreement (the “Agreement”) is hereby incorporated into this Attachment A. SILVER SUPPORT SERVICES. During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following support services (the “Silver Support Services”):

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone or Email Support</td>
<td>Monday-Friday 9:00AM - 6:00PM</td>
</tr>
<tr>
<td>Annual Takedown Limit</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Platform QuickStart (Setup &amp; Onboarding)</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Support Response Time</td>
<td>2 Days</td>
</tr>
<tr>
<td>Weekly Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Monthly Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Product Upgrades</td>
<td>Included</td>
</tr>
<tr>
<td>Additional FoxScript Development</td>
<td>$1000/per FoxScript</td>
</tr>
</tbody>
</table>

Support Phone Number: 1-855-ZFOX-FOX (1-855-9369369), Option 2  Support Email Address: support@zerofox.com

2. “Social Entities” which are identified by Customer, to represent people, organizations or brands, keywords or data, or hashtags, may not be changed without the prior written consent of ZeroFOX.

3. Additional Professional Services. Silver Support Services do not include managed services, on-site support, training, senior incident management support and technical analysis, implementation or documentation services (collectively, “Professional Services”). Any Professional Services to be provided will be included in an Order Form, with additional terms set forth in a Statement of Work. ZeroFOX shall be under no obligation to perform Professional Services until an Order Form and Statement of Work in relation thereto has been mutually executed.

EXHIBIT 3 PLATINUM FULLY-MANAGED SERVICES AGREEMENT

This Platinum Fully-Managed Services Agreement (the “Agreement”) is hereby incorporated into this Attachment A.

1. PLATINUM FULLY-MANAGED SERVICES. During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following services (the “Managed Services”) if Ordering Activity has purchased such Managed Services:

a. ZeroFOX will monitor alerts provided by the Application Services for social entities that are identified by Ordering...
Activity, such as people, organizations or brands, keywords or data, or hashtags (each, a “Social Entity”). Ordering Activity will initially designate the specific Social Entities to be monitored by ZeroFOX, up to the number of Social Entities designated on the applicable Order Form. Social Entities may not be changed without the prior written consent of ZeroFOX. As part of the Managed Services, ZeroFOX will:

i. monitor the Social Entities defined in the Order Form;
ii. create FoxScript rules based on criteria established by Ordering Activity or ZeroFOX, as applicable;
iii. monitor alerts identified by the Application Services, and investigate and analyze such alerts;
iv. create an automated takedown process based on guidelines established by Ordering Activity;
v. submit takedowns to social media networks on behalf of Ordering Activity;
vi. make provision for token refreshing as needed; and

b. All Managed Services will be performed remotely unless otherwise set forth on an Order Form. ZeroFOX is under no obligation to perform on-site services as part of this Agreement.
c. ZeroFOX will provide commercially reasonable telephone and / or email support for problem determination and resolution during normal business days.
d. Summary of services are:

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone or Email Support</td>
<td>Monday-Friday 8:00AM - 8:00PM EST</td>
</tr>
<tr>
<td>Dedicated Customer Success Expert</td>
<td>12 Hours/Quarter</td>
</tr>
<tr>
<td>Annual Takedown Limit</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Platform QuickStart (Setup &amp; Onboarding)</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Support Response Time</td>
<td>Less Than 24 Hours</td>
</tr>
<tr>
<td>Weekly Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Monthly Executive Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Annual Personalized Training</td>
<td>Included</td>
</tr>
<tr>
<td>Annual Optimization &amp; Tuning</td>
<td>Included</td>
</tr>
<tr>
<td>Data Export</td>
<td>Included</td>
</tr>
<tr>
<td>Product Upgrades</td>
<td>Included</td>
</tr>
<tr>
<td>FoxScript Development</td>
<td>1 Per Quarter</td>
</tr>
</tbody>
</table>

Support Phone Number: 1-855-ZFOX-FOX (1-855-9369369), Option 2
Support Email Address: support@zerofox.com
EMC Software Use Rights

EMC® software products ("Software") are licensed by EMC to customers who order directly from EMC ("Direct End-Users") under a signature bearing agreement between EMC and the Direct End-User or under the terms of an End-User License Agreement ("EULA") that is between EMC and the entity making productive use of the Software. The EULA is either in a hard-copy format that is shrink-wrapped to the software media packaging or stated in an electronic "click-wrap" or click-to-accept format that must be electronically accepted prior to downloading and/or installing the Software. EMC also provides Software to its Channel Partners (organizations that resell the license directly to or through additional tiers of resellers to the organization that makes productive use of the Software ["Indirect End-User"]). Channel Partners are required to obtain a written, signed license with the Indirect End-User in a format that meets EMC license requirements, unless the Software is accompanied by the EMC EULA. The information in this Software Use Rights ("SUR") document is provided to further define the license rights and limitations for Software products.

Software is licensed via a unit of measure ("UOM") that quantifies the scope of the license rights being granted on the basis of the particular licensing model used by EMC for such Software. These licensing models are described in this document. The UOM applicable to the Software being offered pursuant to an EMC Quote may be designated in the Software product description in the EMC Quote by the codes described in the following table:

<table>
<thead>
<tr>
<th>UOM Code</th>
<th>UOM (Unit of Measure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Registered Capacity of data measured in terabytes</td>
</tr>
<tr>
<td>CB</td>
<td>Raw Capacity of data measured in terabytes</td>
</tr>
<tr>
<td>CC</td>
<td>Usable Capacity of data measured in terabytes</td>
</tr>
<tr>
<td>FA</td>
<td>Foundation</td>
</tr>
<tr>
<td>FB</td>
<td>Foundation related Service Connector</td>
</tr>
<tr>
<td>FC</td>
<td>Foundation related Application Instance</td>
</tr>
<tr>
<td>FD</td>
<td>Foundation related Advanced Logging Instance</td>
</tr>
<tr>
<td>FE</td>
<td>Foundation related Service Instance</td>
</tr>
<tr>
<td>IA</td>
<td>Instance measured per server</td>
</tr>
<tr>
<td>IB</td>
<td>Instance measured per virtual machine</td>
</tr>
<tr>
<td>IC</td>
<td>Instance measured per storage array</td>
</tr>
<tr>
<td>ID</td>
<td>Instance measured per node</td>
</tr>
<tr>
<td>IE</td>
<td>Instance measured per engine</td>
</tr>
<tr>
<td>MA</td>
<td>Managed Entity measured per device</td>
</tr>
<tr>
<td>MB</td>
<td>Managed Entity measured per inbox or mailbox</td>
</tr>
<tr>
<td>MC</td>
<td>Managed Entity measured per user</td>
</tr>
<tr>
<td>PA</td>
<td>Process Rate measured in pages per year</td>
</tr>
<tr>
<td>UA</td>
<td>Named User</td>
</tr>
<tr>
<td>UB</td>
<td>Concurrent User</td>
</tr>
<tr>
<td>ZA</td>
<td>Central Processing Unit cores (quantity 1-6 cores)</td>
</tr>
<tr>
<td>ZB</td>
<td>Central Processing Unit cores (quantity 7-12 cores)</td>
</tr>
<tr>
<td>ZC</td>
<td>Individual Central Processing Unit Core</td>
</tr>
</tbody>
</table>

EMC Software Models

Registered Capacity Model

Model Description

Licensing and pricing is based upon the Registered Capacity of one or more storage array, Server, or other device(s) on which the Software is licensed for use. The Registered Capacity describes the maximum quantity of data for which the
functionality of the Software is authorized for use. The total capacity of the device may exceed the Registered Capacity that the Software is licensed to operate on.

Software that is licensed on the basis of Registered Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. Each storage array or other hardware device requires the purchase of (i) an initial base product (independent of Registered Capacity) and (ii) an additional quantity of add-on products that reflect the amount of Registered Capacity on which the applicable Software is authorized for use. Customers may subsequently determine they need to use the Software in connection with an amount of data that exceeds the current Registered Capacity. In such cases, customers must either purchase an appropriate number of additional licenses to cover the increase in the Registered Capacity, or purchase a new base product plus Software in instances where a capacity limitation has been reached.

Model Specific Terms and Conditions
- The purchase of a base product license plus add-on product licenses (which are measured by Registered Capacity) are both needed to use the Software product(s).

RAW CAPACITY MODEL

Model Description
Licensing and pricing is based upon the total capacity of the storage array or other devices on which the Software is licensed for use. Software licensed on the basis of Raw Capacity is typically licensed for use only on a specifically identified storage array. This model uses a "base plus capacity" approach as described in the Registered Capacity model above, where the customer purchases one base product license and then purchases incremental capacity add-on product licenses to equal the raw capacity of the system on which the Software will operate.

Model Specific Terms and Conditions
- A base product license plus add-on product licenses (which are measured by Raw Capacity) are both needed to use the Software product(s).

USABLE CAPACITY MODEL

Model Description
Licensing and pricing are based upon the Usable Capacity of one or more storage arrays, Servers, or other devices on which the Software is licensed for use. The Usable Capacity describes the maximum quantity of data for which the functionality of the Software is authorized for use. The Usable Capacity of a licensed device is calculated by EMC on the basis of the Raw Capacity minus Overhead. Raw Capacity is the total data storage capacity of a licensed device. Overhead is that portion of Raw Capacity which EMC determines is reserved for or allocated to spares, RAID types and applications running on a licensed device and on which the software functionality is not to be used.

Software that is licensed on the basis of Usable Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. The Customer or EMC may subsequently make a change to the Raw Capacity, configuration, RAID level or overall environment of a licensed device that increases the Usable Capacity to an amount in excess of the quantity for which the Software has been licensed. In these cases, Customer must purchase an appropriate additional license to cover the increase in the Usable Capacity.

Model Specific Term and Conditions
- The purchase of a base product license plus add-on product licenses (which are measured by Usable Capacity) are needed to use the Software product(s).

INSTANCE MODEL

Model Description
Licensing and pricing is based upon the nature of the hardware platform on which the Software operates. It includes servers that run a single instance, partition, or virtual machine as well as servers that run multiple instances, partitions, or virtual machines (both physical and virtual machines). Each partition running the application constitutes an instance.
This model is also used with server-based Software and Software that is licensed to a specific storage array or to an engine within a storage array. An engine consists of a CPU, cache and data storage (regardless of the speed, performance or capacity of the engine components), as designated by EMC. Adding an engine to an existing storage array enclosure is designated as an upgrade to the existing storage array.

Model Specific Terms and Conditions
- Server-based Software licensed in accordance with the Instance model is generally priced for a particular OS type, such as Windows, Solaris, etc.
- An Instance license may provide support for only a single application type, such as Exchange or Oracle.

MANAGED ENTITY LICENSING MODEL

Model Description
Licensing and pricing is based upon the total number of entities being managed or inspected by the Software. An entity is defined as any singular item being managed or monitored by the EMC Software and can include third-party hardware, a running instance of a software program, an abstract resource (such as an email inbox), or a user. The Software licensed under this model may be used on or with a specific entity or quantity of entities of a specified type.

Examples of physical devices include, but are not limited to: routers, switches, firewalls, load balancers, storage arrays, NAS data movers, NAS systems, blades, and IP phones.

Examples of instances of a software program include, but are not limited to: databases, volume managers, file systems, operating systems, hypervisors, backup software systems, and CMDB systems. An example of an abstract resource is an email inbox being inspected or managed by the Software product. An example of a user as a managed entity is a user that authenticates to a VPN or some other system using the Software product.

Model Specific Terms and Conditions
- Managed Entity Metric Considerations: Under this licensing model, some Software will be licensed by the total number of entities the Software is interacting with while other Software will be licensed for specifically identified entities.

PROCESS RATE LICENSING MODEL

Model Description
Licensing and pricing is based upon the cumulative amount of work done by the Software over a specified time period.

Model Specific Terms and Conditions
- Tiered pricing (price per mailbox decreases as the number of email mailboxes purchased increases).
- Licensing for EMC EmailXtender is limited to the sole and exclusive benefit and use of the user. License rights may not be further assigned or sublicensed to any other party for any other purpose.

NAMED USER LICENSING MODEL

Model Description
Licensing and pricing is based upon the total number of unique named users or seats accessing the Software, whether such users are actively using the Software, or accessing the Software at any given time. If a named user of the Software leaves the employ of the customer, or moves into a role that doesn't require access to the Software, the seat does not have to be relinquished by the customer, but can be reassigned to a different named user.

CONCURRENT USER LICENSING MODEL

Model Description
This model specifies the maximum number of concurrent users who are accessing the Software at any instance in time.
Licensing and pricing is based upon the total number of CPUs present in the computer upon which the Software will operate. A two-tier system is used based on the number of cores present. These two tiers can be combined as needed on CPUs with greater than 12 cores. Neither tier can be split across more than one CPU.

INDIVIDUAL CENTRAL PROCESSING UNITE ("CPU") CORE MODEL

Model Description
Licensing and pricing is based upon the number of “Cores” on which the Software will operate. A “Core” is defined on the basis of the environment in which the Software operates.

When operating the Software in a “bare metal” environment, which means a physical machine without a hypervisor product capable of creating Virtual Machines, and excludes operation within a cloud service environment, a “Core” equals a single, computational unit of the processor.

When operating the Software in a hypervisor (Virtual Machine) environment, a “Core” equals a single unit of virtual processing power (commonly referred to as a “vCPU”) configured to each Virtual Machine. A Virtual Machine is a software container able to run its own operating system and execute applications, just as a physical computer does.

When operating the Software in a public cloud services environment, a “Core” equals a single, basic, most granular unit of computational power as defined by the cloud service provider. This may include, but is not limited to such units expressed as the number of “vCPUs,” “virtual CPUs,” “virtual cores,” and “dynos.”

FOUNDATION LICENSING MODEL

Model Description
Licensing and pricing is based upon the number of Foundations on which the Application Instances will operate. A single Foundation includes use on up to all of the virtual machines running on physical servers at one physical location owned or operated by the licensee.

SERVICE CONNECTOR LICENSING MODEL

Model Description
Licensing and pricing is based on the total number of Foundations (no more than one (1) Service Connector per Foundation) to which a licensee wishes to allow an independent application service, such as a database or a messaging system, to connect to the Foundation. A Service Connector is not needed for a Foundation if all of the information to be processed or acted upon is already housed within the applicable Foundation.

APPLICATION INSTANCE LICENSING MODEL

Model Description
Licensing and pricing is based on the total number of Application Instances that a licensee wishes to simultaneously run on the applicable Foundation or on Pivotal’s online Platform-as-a-Service offering (currently called Pivotal Web Services ("PWS")). Each Application Instance represents a single process running on a single virtual machine within the Foundation or PWS.

ADVANCED LOGGING INSTANCE LICENSING MODEL

Model Description
Licensing and pricing is based on the total number of Advanced Logging Instances that a licensee wishes to run simultaneously on the applicable Foundation. Each Advanced Logging Instance enables the licensee to track and observe the operation and execution of the single Application Instance with which it is it is associated.

FOUNDATION RELATED SERVICE INSTANCE LICENSING MODEL

Model Description
Licensing and pricing is based on the total number of Service Instances that a licensee wishes to simultaneously run on the applicable Foundation. Each Service Instance represents a single, unique configuration of a service (such as a database or other software or middleware) within a Foundation platform that utilizes resources (such as CPU, cores,
virtual machines, memory, messaging, development and/or data storage) within the same or an another licensed Foundation.

ADDITIONAL INFORMATION

Software Access and Use Requirements
Except as otherwise agreed in writing, licenses are required for each device/user accessing or using the Software, notwithstanding any non-EMC technology used to: (i) reduce the number of devices or users the Software directly manages; (ii) pool connections; or (iii) reduce the number of devices/users accessing or using the Software.

Pure Custom Client
Per-Seat licenses of Pure Custom Client are required for each user of each software application accessing a Content Server repository and deploying full read/write access to the Content Server, including applications providing end-user access via application servers, commerce servers, Web servers, or personalization servers.

Read-Only Access
Per-Seat licenses of Read-Only Client, or Documentum Platform Bundle, which includes Read-Only entitlement, are required for each user of each software application accessing a Content Server repository and deploying read-only access to the Content Server, including applications providing access via application servers, commerce servers, Web servers or personalization servers on your behalf. Read-Only Access is limited to the following Content Server functionality only: individual login, individualized security, query/search capability, viewing of content and properties, and personalized delivery of content based on user or information and/or security. Access to the following functionality is excluded from Read-Only Access: import or creation of new content, editing of existing content or properties (check in/checkout), creation of and participation in workflows, promotion or demotion of content in a lifecycle, creation of lifecycles, or any other operation that changes the content of a Content Server repository. The customer is responsible for proper configuration of the system to ensure that Read-Only users are limited to read-only functionality via access control settings. The Documentum Platform Bundle license provides entitlement for Read-Only access using Webtop or third-party custom clients. No other Documentum clients may be used for Read-Only access.

Captiva Input Accel (IA) and Documentum Reporting Services (DRS)
Each licensed installation of IA and DRS includes a single copy of SAP’s Business Objects Crystal Reports Designer, which you may use solely in connection with your licensed use of IA or DRS, and only with data created or used by IA or DRS. You may not install more than one copy of Crystal Reports Designer per licensed installation of IA or DRS.

xplore Software
Use of EMC’s ApplicationXtender xplore software product is only permitted with content residing in EMC’s ApplicationXtender software product. No standalone use of xplore is permitted except with the written consent of EMC.

xCPUt User
Single App is licensed for a Named User to access a single xCP-based application. If a user needs access to more than one xCP-based application, an additional xCP Single App license is required or the user should be licensed for the xCP User Unlimited license.

Application Specific Licensing (ASL)
Any software product EMC designates as Application Specific License products, including the underlying components of any software bundle, may only be used for the specific solution/application for which it is licensed. Use of the software or any individual components for any other purpose, including general content management functionality, is prohibited. The following is a partial list of software products designated as ASL products:
- EMC Clinical Archiving
- EMC Documentum for Life Sciences – Quality and Manufacturing
- EMC Documentum for Life Sciences – Electronic Trial Master File
- EMC Documentum for Life Sciences – Research and Development
- EMC Documentum for Life Sciences – Submissions Store and View
- EMC Engineering, Plant and Facilities Management – Asset Operations
- EMC Engineering, Plant and Facilities Management – Capital Projects
TEMPORARY TERM EXPIRING LICENSES

Evaluation and Other Non-production Use Licenses
In certain instances and at EMC’s discretion, EMC may grant a short-term license for the purpose of demonstration, evaluation, or some other non-production internal use. Such license may be issued as a 30-day license for standalone Software or a 90-day license for array-based systems Software. At the end of the temporary term, the license to use the Software expires and the Software may cease to operate. The temporary term begins once the licenses are made available (e.g., either by making the Software available for download or by delivering the CD to the customer).

Failover Expiring Licenses
Each license entitlement includes the right to run the Software on a separate computer in a failover environment for up to 30 separate days in any given calendar year for purposes of emergency management. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software. License keys for such licenses must be obtained from EMC by making a request through EMC Powerlink®.

Backup Testing Expiring License
For the purpose of testing physical copies of backups, license rights include the capability to run the Software on an unlicensed computer for up to 30 days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software.

Emergency Expiring License
EMC will allow and support the use of emergency licenses for customer critical situations, such as getting back into production in a disaster recovery situation or resolving a situation with an incorrect License Key being delivered. Each license entitlement includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the software.

Service License
EMC will allow the use of service-related licenses for customer situations in conjunction with EMC’s support organization when initiated and used by EMC support personnel. The license includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year.

MOVE POLICY
A “move” of a Software license is defined as when the original licensee stops using a Software product on one system or device and begins using it on another of the licensee’s own systems or devices.

<table>
<thead>
<tr>
<th>Software Type</th>
<th>Moveable?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Environment (OE)</td>
<td>No</td>
<td>Operating system-type software installed on EMC storage device or other hardware. Enables basic system functionality. This Software is licensed solely for use on the hardware device on which it is shipped; therefore, the license is not eligible to be moved to another device.</td>
</tr>
<tr>
<td>OE Application</td>
<td>Yes</td>
<td>Software applications that can only run on EMC OE Software. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC.</td>
</tr>
</tbody>
</table>
| Platform | Yes | Software applications that run on non-EMC OE's but interacts with EMC products. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original EMC hardware system; the features, functionality, and price of the Software are the same on the new and old EMC hardware systems; the source EMC hardware system is technologically compatible with the target EMC hardware system; the move is not prohibited by the product support agreement; any applicable move fees are paid to EMC.

Given the above constraints, the following additional rules apply:
- Moves from multiple systems to one system (consolidation) are allowed.
- Moves from one system to two or more systems are not allowed, as a software license is indivisible.
- Moving a raw capacity license to a second system for use as a registered capacity license is not allowed and vice versa. |
| Host Application | Yes | Software which is not designed solely for installation and use on an EMC storage device, but which runs on a standalone server, an appliance or some other hardware device. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC. |

**TRANSFER POLICY**

“Transfer” of a Software license is defined as when the original licensee has stopped using a Software product and wants to sell or otherwise transfer the rights to use the Software to a secondary purchaser. EMC does not allow transfers under any circumstances; in all cases, the secondary purchaser must purchase a new license to run the Software.

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## EMC BASIC SUPPORT

The following chart lists the service features of Basic Support provided under EMC’s standard warranty and/or maintenance terms.

Basic Support is available as to:

1. **EMC® Equipment** which is identified on the [EMC Product Warranty and Maintenance Table](#) as
   - including Basic Support during the applicable warranty period; or
   - eligible for Basic Support during a subsequent maintenance period

2. **EMC Software** which is identified on the [EMC Product Warranty and Maintenance Table](#) as eligible for Basic Support during a maintenance period.

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>BASIC SUPPORT – COVERAGE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>**GLOBAL TECHNICAL</td>
<td>Customer may contact EMC by telephone or web interface 24x7 to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem, or, (ii) when deemed necessary by EMC Onsite Response as described below.</td>
<td>Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 2 local business hours; on a 9x5 basis Severity Level 2: 4 local business hours; on a 9x5 basis Severity Level 3: 8 local business hours; on a 9x5 basis Severity Level 4: 12 local business hours; on a 9x5 basis</td>
</tr>
<tr>
<td>SUPPORT</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ONSITE RESPONSE</strong></td>
<td>EMC sends authorized personnel to the installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response is necessary.</td>
<td>Not included. Available for purchase under EMC's then-current, standard time and materials terms, conditions, and pricing.</td>
</tr>
<tr>
<td>**REPLACEMENT PARTS</td>
<td>EMC provides replacement parts when deemed necessary by EMC.</td>
<td>Included. Replacement parts will be shipped to the Customer for next local business day arrival. Local country shipment cut-off times may impact the next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC.</td>
</tr>
<tr>
<td><strong>DELIVERY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights to New Releases of Software</td>
<td>EMC provides the rights to new Software Releases as made generally available by EMC.</td>
<td>Included.</td>
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<td>----------------------------------</td>
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</tr>
<tr>
<td>Installation of Software Releases</td>
<td>Installation of new Software Releases is not included.</td>
<td>Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).</td>
</tr>
<tr>
<td>24x7 Remote Monitoring and Repair</td>
<td>Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination.</td>
<td>Not included.</td>
</tr>
<tr>
<td>24x7 Access to Online Support Tools</td>
<td>Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.</td>
<td>Included.</td>
</tr>
</tbody>
</table>

*Severity Levels:

- **Severity 1 - Critical**: a severe problem is preventing the customer or workgroup from performing critical business functions.
- **Severity 2 - High**: the customer or workgroup is able to perform job function, but performance of job function is degraded or severely limited.
- **Severity 3 - Medium**: the customer or workgroup performance of job function is largely unaffected.
- **Severity 4 - Request**: minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. June 4, 2014
EMC ENHANCED SUPPORT

The following chart lists the service features of Enhanced Support provided under EMC’s warranty and/or maintenance terms.

Enhanced Support is available as to:

1. EMC® Equipment which is identified on the EMC Product Warranty and Maintenance Table as
   - Including Enhanced Support during the applicable warranty period; or
   - eligible for upgrade to Enhanced Support during the applicable warranty period; or
   - eligible for Enhanced Support during a subsequent maintenance period

2. EMC Software which is identified on the EMC Product Warranty and Maintenance Table as eligible for Enhanced Support during a maintenance period

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>ENHANCED SUPPORT &amp; COVERAGE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GLOBAL TECHNICAL SUPPORT</strong></td>
<td>Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Response as described below.</td>
<td>Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 1 hour; on a 24x7 basis Severity Level 2: 3 hours; on a 24x7 basis Severity Level 3: 4 local business hours Severity Level 4: 10 local business hours</td>
</tr>
<tr>
<td><strong>ONSITE RESPONSE</strong></td>
<td>EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Support necessary.</td>
<td>Included for Equipment only. Initial Onsite Response objective is next local business day, on a 9x5 basis, after EMC deems Onsite Response is necessary. Onsite Response does not apply to Software, but may be separately purchased.</td>
</tr>
<tr>
<td><strong>REPLACEMENT PARTS DELIVERY</strong></td>
<td>EMC provides replacement parts when deemed necessary by EMC.</td>
<td>Included. Replacement part delivery objective is next local business day. Local country shipment cut-off times may impact next local business day delivery of replacement parts and the related Onsite Response. Installation of Customer Replaceable Units (CRUs) is the responsibility of the Customer. Refer to the EMC Product Warranty and Maintenance Table for listing of parts designated as CRUs. Installation of all other non-CRU parts performed by EMC. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If a Customer installs the CRU, the Customer is responsible for returning the replaced CRU to a facility designated by EMC.</td>
</tr>
<tr>
<td><strong>RIGHTS TO NEW RELEASES OF SOFTWARE</strong></td>
<td>EMC provides the rights to new Software Releases as made generally available by EMC.</td>
<td>Included.</td>
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</tr>
<tr>
<td><strong>INSTALLATION OF SOFTWARE RELEASES</strong></td>
<td>Installation of new Software Releases is not included.</td>
<td>Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).</td>
</tr>
<tr>
<td><strong>24x7 REMOTE MONITORING AND REPAIR</strong></td>
<td>Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.</td>
<td>Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Global Technical Support and Onsite Response will apply as previously described.</td>
</tr>
<tr>
<td><strong>24x7 ACCESS TO ONLINE SUPPORT TOOLS</strong></td>
<td>Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.</td>
<td>Included.</td>
</tr>
</tbody>
</table>

*Severity Levels:*
- **Severity 1: Critical**: a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2: High**: the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3: Medium**: the customer or workgroup performance of job function is largely unaffected.
- **Severity 4: Request**: minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. June 4, 2014
EMC PREMIUM SUPPORT

The following chart lists the service features of Premium Support provided under EMC’s warranty and/or maintenance terms.

Premium Support is available as to:

1. EMC® Equipment which is identified on the EMC Product Warranty and Maintenance Table as
   - including Premium Support during the applicable warranty period; or
   - eligible for upgrade to Premium Support during the applicable warranty period; or
   - eligible for Premium Support during a subsequent maintenance period

2. EMC Software which is identified on the EMC Product Warranty and Maintenance Table as eligible for Premium Support during a maintenance period

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>PREMIUM SUPPORT COVERAGE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>GLOBAL TECHNICAL SUPPORT</td>
<td>Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Response as described below.</td>
<td>Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 30 minutes; on a 24x7 basis Severity Level 2: 2 hours; on a 24x7 basis Severity Level 3: 3 local business hours Severity Level 4: 8 local business hours</td>
</tr>
<tr>
<td>ONSITE RESPONSE</td>
<td>EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response necessary.</td>
<td>Included for Equipment only. Initial Onsite Response objective is based on Severity Level, within the following time period after EMC deems Onsite Support is necessary. Severity Level 1: 4 hours on a 24x7 basis Severity Level 2: Within 12 hours on a 24x7 basis Severity Level 3: Next business day, local business hours Severity Level 4: Next business day, local business hours Onsite Response does not apply to Software, but may be separately purchased.</td>
</tr>
<tr>
<td>REPLACEMENT PARTS DELIVERY</td>
<td>EMC provides replacement parts when deemed necessary by EMC.</td>
<td>Included. Replacement part delivery objective is based upon Severity Level, within the following time period after EMC deems a replacement part is necessary: Severity Level 1: 4 hours on a 24x7 basis Severity Level 2: Within 12 hours on a 24x7 basis Severity Level 3: Next business day, local business hours Severity Level 4: Next business day, local business hours</td>
</tr>
<tr>
<td>Rights to New Releases of Software</td>
<td>EMC provides the rights to new Software Releases as made generally available by EMC.</td>
<td>Included.</td>
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<tr>
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<td>-----------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>INSTALLATION OF SOFTWARE RELEASES</td>
<td>EMC will perform the installation of new Software Releases.</td>
<td>Included for Software which EMC determines is Equipment operating environment Software.</td>
</tr>
<tr>
<td>24x7 Remote Monitoring and Repair</td>
<td>Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.</td>
<td>Included for products which have remote monitoring tools and technology available from EMC.</td>
</tr>
<tr>
<td>24x7 Access to Online Support Tools</td>
<td>Customers who have properly registered have access on a 24x7 basis to EMC’s web-based knowledge and self-help customer support tools via the EMC Online Support site.</td>
<td>Included.</td>
</tr>
</tbody>
</table>

*Severity Levels:*
- **Severity 1: Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2: High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3: Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4: Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.
Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. October 9, 2013
1. Except as otherwise agreed by EMC and the customer in a written agreement or as set forth below, the warranty duration for software provided under an agreement directly between EMC as licensor and the customer is ninety (90) days from the date of shipment, or the date of electronic availability, as applicable.

2. The warranty duration for Core Software (the programming or microcode firmware included by EMC with equipment to enable the equipment to perform is basic functions) is the same as the warranty duration of the equipment on which the Core Software is designed to operate.

3. The warranty duration for software (i) identified as “EMC Select;” or (ii) provided under a license agreement from an entity other than EMC, is as separately stated in the license agreement accompanying such software.

4. The foregoing warranty durations apply to software listed on orders submitted to EMC during the period in which the applicable warranty duration is in effect. EMC may change the warranty durations described above at any time and shall notify customer of such change via reposting to this site. However, any such change shall not apply to any software listed on an order referencing a valid EMC Quote that is dated prior to the date of such change.


**EMC Product Warranty and Maintenance Table**

The table below sets forth EMC® product-specific warranty and maintenance terms and information. Each product identified as equipment also includes its related operating system, operating environment or microcode (also defined in many contracts as “Core software”), if any, unless the table indicates that such operating system is licensed as a separate product. Any EMC software that is licensed as a separate product and is not specifically identified on this table is governed by the terms stated in the row entitled “software.”

EMC recommends that you locate products on the following table by simultaneously pressing the “Control” key and the letter “F” key to activate the “Find” feature, and then typing in the name of the applicable product.

Additional information about available Support Options as well as other important information can be found by clicking the link found [here](#).

Notice: In accordance with widely used business practices in the IT industry and in support of EMC’s worldwide sustainability and recycling initiatives, Equipment may contain components that are (i) previously unused; or (ii) re-manufactured to contain the most current updates, meet all relevant test specifications and be functionally equivalent to previously unused components. Spare, upgrade and/or replacement components may be re-manufactured. EMC warranty terms apply equally to all components. For information on EMC’s recycling and sustainability efforts please [click here](#).

<table>
<thead>
<tr>
<th>Product</th>
<th>Standard Warranty</th>
<th>Available Support Options</th>
<th>Designated Customer- Replaceable Units (CRUs)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>AlphaStor Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>ApplicationXtender Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>AppSync</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Atmos Equipment</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk drives (Atmos software 2.2.0 or greater required)</td>
</tr>
<tr>
<td>Atmos Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Autograph Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Automated Failover Manager (AFM) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a RecoverPoint or MirrorView maintenance support option.</td>
<td>Premium</td>
<td>None The AFM is included with RecoverPoint or MirrorView software only</td>
</tr>
<tr>
<td>AutoStart Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>AutoSwap Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>AVALONidm Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
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</tr>
<tr>
<td>Avamar Data Store</td>
<td>2 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, disk drives</td>
</tr>
<tr>
<td>Avamar Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Backup Manager for SharePoint Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Blade Logic Brand Software</td>
<td>No longer available for sale; maintenance only</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Captiva Family Software (Except Ptools and QuickScanPro products)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Celerra NS-120 and NS-480 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures), blade, management I/O module (in Storage Processor enclosure), SPF transceiver, standby power supply, and disk</td>
</tr>
<tr>
<td>Celerra NS20 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures), SPF transceiver module, disk</td>
</tr>
<tr>
<td>Celerra NS-960 and NS-G8 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>SPF transceivers, X-Blade enclosure power supply, X-Blade enclosure fan, Storage Processor enclosure power supply, Storage Processor enclosure fan, and disk</td>
</tr>
<tr>
<td>Celerra NS-G2 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling Module (in Processor Enclosures), fan blade, SPF transceiver, and disk</td>
</tr>
<tr>
<td>Celerra NX4 equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures, and in disk array enclosures), blade, Storage Processor (SP), SP DMMI memory, SP I/O module, SPF transceiver, standby Power supply, Link control card, and disk</td>
</tr>
<tr>
<td>Celerra NX4 Core software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Celerra VG2 and VG8 Equipment</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power/cooling Module, SPF-compliant transceiver, Ultraflex I/O Module, Management Module</td>
</tr>
<tr>
<td>Centera Family Equipment</td>
<td>2 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>With Enhanced support option, Customer is responsible for resetting of modems and nodes</td>
</tr>
<tr>
<td>Centera Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>CLARIION AX4 series equipment</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>All components: Installation of AX4 Core software and system-based software releases</td>
</tr>
<tr>
<td>CLARIION AX4 software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>CLARIION CX4-series Equipment</td>
<td>No longer available for sale; maintenance only</td>
<td>Premium, Enhanced</td>
<td>Power supply, cooling units, small form factor pluggable transceivers, disk drives per approval of Disk Replacement Utility (DRU) tool, EAE power supply, LLC; Installation of CX4-Series Core software and system-based software releases</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
<td>Designated Customer- Replaceable Units (CRUs)*</td>
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</tr>
<tr>
<td>CloudArray Software (Appliance and Virtual Edition)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>CloudArray Appliance Equipment</td>
<td>1 year; Limited</td>
<td>Premium</td>
<td>Disk Drives, Power Supply</td>
</tr>
<tr>
<td>Cloud Tiering Appliance (CTA) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Cloud Tiering Appliance – Virtual Edition (CTA/VE) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Cloud Tiering Appliance (CTA) Equipment</td>
<td>1 year; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk Drives, Power Supply</td>
</tr>
<tr>
<td>Connectrix Family of Directors</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power supplies, fans, optics, cables</td>
</tr>
<tr>
<td>Connectrix Family of Switches (except Connectrix devices listed below)</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power supplies, fans, optics, cables and the complete switch when applicable</td>
</tr>
<tr>
<td>Connectrix Manager Software including CMDOE, CMCNE, Cisco Fabric Manager and Data Center Network Manager</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Connectrix NEX-5010, NEX-5020, AP-7600B, ES-562B, MP-8000B, MP-7500B, MP-7800B, MP-7840B</td>
<td>2 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>CopyPoint Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Data Domain Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Data Domain System</td>
<td>1 year hardware only; Limited Warranty Software (DDOS) 90 days; defective media replacement Support for DDOS during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>Power supply, disk drives, SAS controller on ES20, external fans, bezels, cables and rails</td>
</tr>
<tr>
<td>Data Protection Advisor</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>DatabaseXtender Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Disk Library DL1500, DL3000, and 3D 4000 Family Equipment</td>
<td>1 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Disk Library Family Equipment (except for DL1500, DL3000, and 3D 4000)</td>
<td>2 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Disk Library for Mainframe, DLm8000/6000/2000/1000, DLm8100 w/VMAX, DLm8100 w/VNX/DD, DLm2100 w/DD, DLm2100 w/VNX</td>
<td>2 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
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</tr>
<tr>
<td>DissXtend Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Documentum Family Software (except ApplicationXtender)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>ECS Appliance Equipment</td>
<td>Equipment: 1 year; Limited</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>ECS Appliance Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>eRoom Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>File Management Appliance Equipment</td>
<td>1 year; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk drives, power supplies</td>
</tr>
<tr>
<td>File Management Appliance Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Geographically Dispersed Disaster Restart Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Greenplum Data Computing Appliance (DCA)</td>
<td>1 year hardware only; Limited Warranty</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Greenplum Data Integration Accelerator (&quot;DIA&quot;)</td>
<td>1 Year hardware only; Limited Warranty</td>
<td>Premium (covers both hardware and software portion of the DIA)</td>
<td>EMC will perform the installation of software updates included with the purchase of the DIA</td>
</tr>
<tr>
<td>Greenplum DCA DE (operating environment Software)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>EMC will perform the installation of software updates included with the purchase of the DCA. However, before EMC can perform the installation of an out-of-family software update (e.g., 4.0 to 4.1) for the Greenplum Database software on the DCA, Customer is required to purchase the DCA Greenplum Database Upgrade Preparation Service.</td>
</tr>
<tr>
<td>Greenplum Family Standalone Production Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>HomeBase Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>InfoMover</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Ionix ControlCenter Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Ionix Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Ionix for IT Operations Intelligence (formerly Smarts)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Ionix Network Configuration Manager (formerly Voyance)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Product</td>
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</tr>
<tr>
<td>Isilon Family Equipment</td>
<td>1 year hardware only; Limited Warranty</td>
<td>Premium, Enhanced</td>
<td>Power supplies, power cables, NVRAM batteries, Hard Disks, Rail kits, IB switches, IB cables, faceplates</td>
</tr>
<tr>
<td>Isilon Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>IT Compliance Analyzer Application Edition Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>IT Performance Reporter Network Edition Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>IT Process Centre Request Management Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Mainframe Disk Library (MDL) Equipment</td>
<td>1 year; Basic</td>
<td>Premium, Enhanced, Basic</td>
<td>Disk drives, power supplies</td>
</tr>
<tr>
<td>Mainframe Disk Library (MDL) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>MirrorView Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Navisphere Family Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>NetWorker Family Software (except for NetWorker Fast Start)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Open Migrator/CM Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Open Replicator For Symmetrix Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>PowerExchange PWX Connector to Greenplum</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>PowerPath Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>ProSphere Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Rainfinity Appliance Equipment</td>
<td>1 year; Enhanced</td>
<td>Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)</td>
<td>Disk drives and power supply</td>
</tr>
<tr>
<td>Rainfinity Appliance Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)</td>
<td>None</td>
</tr>
<tr>
<td>RecoverPoint Equipment</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>RecoverPoint Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
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</tr>
<tr>
<td>Replication Manager Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>RepStor Software</td>
<td>No longer available for sale; maintenance only</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>SAN Copy Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>ScaleIO</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>SnapView Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Software (all other EMC Software products not listed separately in this table)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Basic</td>
<td>None</td>
</tr>
<tr>
<td>SourceOne eDiscovery Equipment</td>
<td>1 year; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, disk drives</td>
</tr>
<tr>
<td>SourceOne eDiscovery Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>SourceOne Family Software (excluding SourceOne eDiscovery)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>SRDF Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Storage Analytics Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Storage Resource Management Suite</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix DMX Ensignity (operating environment software)</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix DMX Family Equipment (excluding Symmetrix VMAX)</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix Management Console Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix Manager Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix Optimizer Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix VMAX Cloud Edition</td>
<td>1 year; Limited</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix VMAX/VMAXe Ensignity (operating environment software)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix VMAX/VMAXe Family Equipment (operating environment licensed separately)</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>Disk drives</td>
</tr>
</tbody>
</table>
| Product | Standard Warranty | Available Support Options | Designated Customer Replaceable Units (CRUs)

<p>| Telesstream Filp Factory Software | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium, Enhanced, Basic | None |
| TimeFinder Family Software | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium | None |
| VFCache | 3 years; Enhanced | Premium, Enhanced | VFCache PCIe card |
| VIPR | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium | None |
| VIPR SRM | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium, Basic | None |
| VMAX 10K File | 3 years, Enhanced | Premium, Enhanced | Power supply, UltraFlex I/O module, SFP transceiver, management module |
| VMAX NAS Gateway with VNX VG10 or VNX VCSU Data Movers | 3 years, Enhanced | Premium, Enhanced | Power supply, UltraFlex I/O module, SFP transceiver, management module |
| VNX CA | 3 years, Enhanced | Premium, Enhanced | Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module |
| VNX F | 1 year, hardware only; Limited Warranty Software (VNX OE) – see below | Premium, Enhanced | Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module |
| VNX OE (operating environment software) | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium, Enhanced | None |
| VNX optional Software products | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium, Enhanced | None |
| VNX VG2 VNX VG8 VNX VG10 VNX VG50 | 3 years, Enhanced | Premium, Enhanced | Power supply, UltraFlex I/O module, SFP transceiver, management module |
| VNX5100 | 3 years, Enhanced | Premium, Enhanced | Disks, power supply, standby power supply, SFP transceiver, link control card |
| VNX5150 | 3 years, Basic | Premium, Enhanced | Disks, power supply, standby power supply, SFP transceiver, link control card |
| VNX5200 VNX5400 VNX5600 VNX5800 VNX7600 VNX8000 | 3 years, Enhanced | Premium, Enhanced | Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module |
| VNX5300 VNX5500 VNX5700 VNX57500 | 3 years, Enhanced | Premium, Enhanced | Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module, management module |
| VNX OE (operating environment software) | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium, Enhanced: (VNXe3300) Premium, Enhanced, Basic: (VNXe3100, VNXe 3150 and VNXe3200) | None |
| VNXe optional Software products | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Premium, Enhanced: (VNXe3300) Premium, Enhanced, Basic: (VNXe3100, VNXe 3150 and VNXe3200) | None |</p>
<table>
<thead>
<tr>
<th>Product</th>
<th>Standard Warranty</th>
<th>Available Support Options</th>
<th>Designated Customer Replaceable Units (CRUs)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>VNKE3100, VNKE3150 and VNKE3200</td>
<td>3 years, Basic</td>
<td>Premium, Enhanced, Basic</td>
<td>Disk, power supplies (IAE and DPE), battery</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>backup, I/O card, storage processor, AC/Fibre</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>cables, memory, link control cards (LCC), and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SSD.</td>
</tr>
<tr>
<td>VNKE3300</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk, power supplies (IAE and DPE), battery</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>backup, I/O card, storage processor, AC/Fibre</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>cables, memory, link control cards (LCC), and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SSD.</td>
</tr>
<tr>
<td>VNKE-VSS QE (operating environment software for VNKE-VSS)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>VNKE-VSS100</td>
<td>3 years, Limited</td>
<td>Enhanced, Basic</td>
<td>Disks, power supply, standby power supply,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SFP transceiver, link control card, Ultraflex I/O module</td>
</tr>
<tr>
<td>VPLEX Equipment</td>
<td>3 years, Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>VPLEX Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>EMC will perform the installation of software updates</td>
</tr>
<tr>
<td>VPLEX Blue</td>
<td>1 year, hardware only; Limited</td>
<td>Premium, Enhanced, Basic</td>
<td>Power supply</td>
</tr>
<tr>
<td>Watch4Net</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>WoodWing Smart Connection Enterprise Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>XPRESSion Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>XtremIO Equipment</td>
<td>3 years; Limited</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>XtremIO SW Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>XtremIF</td>
<td>3 years or maximum endurance reached, whichever occurs first; Basic. Replacement of server flash PCIe cards that have reached their maximum endurance is not included. Contact EMC or an authorized EMC partner to purchase a replacement when maximum endurance has been reached. Refer to the XtremIF user guide for additional information regarding maximum endurance.</td>
<td>Premium, Enhanced, Basic</td>
<td>XtremIF PCIe card</td>
</tr>
<tr>
<td>XtremSW Cache</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>XtremSW Suite</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>2/OS Storage Manager Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
</tbody>
</table>

* Customer Replaceable Units (CRUs): CRUs are specific assemblies, components, or individual parts of designated EMC equipment that the customer is authorized by EMC to self-replace. In the event of a failure or technical issue, the customer may remove and replace a CRU by using EMC-provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs must be serviced and/or replaced by EMC or an EMC authorized service partner.

EMC LIMITED WARRANTY

The following chart lists the service features of Limited Warranty provided under EMC's standard warranty and/or maintenance terms.

Limited Warranty is available for EMC® Equipment which is identified on the EMC Product Warranty and Maintenance Table as including Limited Warranty during the applicable warranty period.

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>LIMITED SUPPORT COVERAGE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>GLOBAL TECHNICAL SUPPORT</td>
<td>Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC Onsite Response as described below.</td>
<td>Included for Equipment only. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: Two local business hours; on a 9x5 basis Severity Level 2: Four local business hours; on a 9x5 basis Severity Level 3: Eight local business hours; on a 9x5 basis Severity Level 4: 12 local business hours; on a 9x5 basis</td>
</tr>
<tr>
<td>ONSITE RESPONSE</td>
<td>EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response necessary.</td>
<td>Not included. Available for purchase under EMC's then-current, standard time and materials terms, conditions, and pricing.</td>
</tr>
<tr>
<td>REPLACEMENT PARTS DELIVERY</td>
<td>EMC provides replacement parts when deemed necessary by EMC.</td>
<td>Included. Replacement parts will be shipped to Customer for next local business day delivery of replacement parts. Local country shipment cut-off times may impact the same day/next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC.</td>
</tr>
<tr>
<td>RIGHTS TO NEW RELEASES OF SOFTWARE</td>
<td>EMC provides the rights to new Software Releases as made generally available by EMC</td>
<td>Not included.</td>
</tr>
<tr>
<td>INSTALLATION OF SOFTWARE RELEASES</td>
<td>EMC will perform the installation of new Software Releases.</td>
<td>Not included. Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).</td>
</tr>
<tr>
<td><strong>24x7 REMOTE MONITORING AND REPAIR</strong></td>
<td>Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.</td>
<td>Not included.</td>
</tr>
<tr>
<td><strong>24x7 ACCESS TO ONLINE SUPPORT TOOLS</strong></td>
<td>Customers who have properly registered have access on a 24x7 basis to EMC’s web-based knowledge and self-help customer support tools via the EMC Online Support site.</td>
<td>Included.</td>
</tr>
</tbody>
</table>

*Severity Levels:*
- **Severity 1: Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2: High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3: Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4: Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC’s performance of warranty and maintenance services on Products obtained from a reseller.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

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Rev. December 10, 2014
ATTACHMENT B
GOVERNMENT PRICE LIST

INSTRUCTIONS:

To view the Government Price List for this contract, please follow the below URL:

www.ecamerica.com

Then select the URL for GS-35F-0511T, and then the specific manufacturer. The Government Price List for that manufacturer is found under the “Contract Vehicles, Pricelists & Terms” section.